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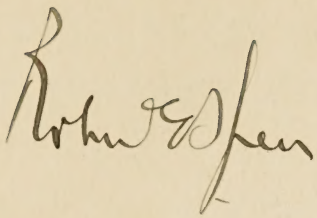

# STATE CONTROL OF PRIVATE INCORPORATED INSTITUTIONS OF HIGHER EDUCATION

As Defined in Decisions of the United States Supreme Court, Laws of the States Governing the Incorporation of Institutions of Higher Education, and Charters of Selected Private Colleges and Universities

BY

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L. W. B.

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# STATE CONTROL OF PRIVATE INCORPORATED INSTITUTION OF HIGHER EDUCATION

## CHAPTER I

### STATE CONTROL OF PRIVATE INCORPORATED INSTITUTIONS OF HIGHER EDUCATION, SETTING, METHOD, DEFINITIONS

BRIEF

A. Setting

Three phenomena bring higher education within the realm of state concern:

The rapidly increasing demand for higher education.

The conception that higher education is a function of the state.

The present movement toward standardization of higher education.

Public institutions, under state support, are within the control of the state.

B. Method

Question:

What authority has the state to incorporate institutions, place limitations upon the powers of an institution at the time of incorporation, and exercise a continuing control over an institution after incorporation?

Under this authority, what control is exercised by the states?

Sources:

Decisions of the United States Supreme Court.

Laws of the states governing the incorporation of institutions of higher education.

Charters of selected private colleges and universities.

C. Definitions

State control.

Institutions of higher education.

Private incorporated institution of higher education.

Initial control by the state.

Continuing control by the state.

Educational agency of the state.

The managing board of an institution.

SETTING

Three phenomena bring higher education within the realm of state concern: (*a*) the rapidly increasing demand for higher education; (*b*) the conception that higher education, as well as elementary and secondary, is a responsibility of the state; (*c*) the present movement toward the standardization of higher education.

*The demand for higher education is registered in the increasing enrollment at colleges and universities.* The growth of enrollment in the institutions of higher education since 1890 has been 4.7 times as fast as the growth in general population. During the two years, 1920-1922, the increase was approximately 18 per cent, or twice the increase for the entire decade, 1890 to 1900, and slightly more than for the decade, 1900 to 1910. [1] [1] Indications are that the enrollment will increase. During the same period, 1890-1922, the secondary schools increased in enrollment 8.3 times as rapidly as the general population, or 1.8 times as fast as the enrollment in colleges. [1] Not only is the college population increasing rapidly; there results a proportionate increase in the number of graduates who disperse into the state and intensify the interest in higher education. In 1890, 6,853 baccalaureate degrees were conferred; in 1922, 47,854. [1] It is evident that higher education is one of the growing interests of the state, and, as such, comes within the realm of state concern.

*The interest of the state in higher education is established in policy and practice.* Yet the way in which that interest is expressed has changed. In the Colonial period and well into the middle of the nineteenth century stimulation and promotion characterized the activity of the state without any established policy of state control. Charters to colleges from the legislatures were grants of power and privilege to be enjoyed under private initiative. Expressions of this policy appear in the early laws. The constitution of Massachusetts, 1780, states:

> It shall be the duty of the legislature and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University of Cambridge . . . [2]

[1] Numbers within brackets refer to the publications given at the end of each chapter.

In the constitution of Pennsylvania, 1790, is a provision that "the arts and sciences shall be promoted in one or more seminaries of learning." [3] Similar provisions appear in the constitutions of North Carolina and Georgia. Even the Regents of the University of the State of New York, recognized as an outstanding example of a state agency charged with control over higher education, was created in 1784 primarily for the purpose of promoting seminaries of learning. (See page 90.)

State aid to institutions of higher education has been practiced from the founding of the first college. The General Court of Massachusetts Colony appropriated toward the support of Harvard College at the time of its creation the sum of 400 pounds, an exceedingly generous amount for the small population then in the colony, equaling the entire tax for all other purposes. [4] Yale, Dartmouth, William and Mary, Columbia, and Pennsylvania received grants from their respective commonwealths during the Colonial period. [5] Except in a few eastern states, notably Vermont, New York, New Jersey, Pennsylvania, and Maryland, the practice of the states in giving aid to private institutions has ceased. [6]

State aid is now applied differently. Participation of the state in higher education through institutions of its own, under its support, is exemplified by forty-four state universities. This conception of state participation was first registered legally in the constitution of the state of North Carolina, 1776, which states that "all useful learning shall be duly encouraged, and promoted in one or more universities" (clause XLI). The charter for the university was granted by the General Assembly in 1789. [10] The constitution of the independent republic of Vermont, in 1777, likewise declared that "one university in the state ought to be established by direction of the General Assembly." In 1791 the charter of the University of Vermont was granted. [10] The University of Georgia was created by the legislature of Georgia in 1785. [10]

The conception of the state university as a part of the educational system of the state is clearly defined in the constitution of Indiana, 1816. Section 2 states:

> It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law for a general system of education,

ascending in a regular gradation from township schools to a state university, wherein tuition shall be gratis, and equally open to all. [7]

Virginia established its university, the University of Virginia, in 1819, rewarding the efforts of Thomas Jefferson, the foremost early exponent of a state system of education. There followed in 1817 the University of Michigan, the educational center of the state of Michigan.

Further recital is not necessary. It is evident that higher education is an interest of the state, expressed first in promotion and financial aid, later in participation through institutions under state support and control. If the policy is to prevail that higher education be provided for all qualified students who desire it, then the present rapidly increasing demand compels the attention of the state to the providing of adequate facilities.

Cubberley summarizes the position of the state's responsibility in these words:

> It ought to be essentially the business of the State to formulate a constructive policy for the development of the education of the people of the State, and to change this policy from time to time as the changing needs of the State may seem to require. [8]

*The present tendency toward standardization in higher education also brings higher education within the realm of state concern.* Cubberley says further:

> The formulation of minimum standards for the various forms of public education, the raising of these standards from time to time, the protection of these standards from being lowered by private agencies, and the stimulation of communities to additional activity, is a fundamental right and duty of the State. [8]

Four agencies, either directly or indirectly, are active in raising the standards of higher education: professional associations, institutional associations, educational foundations, and state licensing agencies (including teacher certification).

Activity began with the professional associations. In 1846 the American Medical Association was established. This was followed by the American Society of Civil Engineers in 1852, National Education Association (National Teachers Association) in 1857, American Bar Association in 1878, American Society of Mechanical Engineers in 1884. [9] Attention by these associa-

tions is confined to the respective professions and directed toward their general improvement. For instance, the efforts of the Council on Medical Education of the American Medical Association are outstanding. Under the policy of spontaneous development which characterized the establishment of medical schools during the early and middle decades of the nineteenth century the schools were for the most part proprietary and operated for profit, wholly didactic in method of instruction, and developed without standards for equipment and training. The United States and Canada produced four hundred and fifty-seven medical schools under this policy, of which one hundred and fifty-five survived in 1910. [11] Due to the activity of the American Medical Association, weaker proprietary schools were gradually discontinued and the stronger ones standardized. [11] In 1923 the medical schools of the United States totaled eighty-one, of which seventy were rated as class A. [12]

Following the professional associations in date of organization came the institutional associations, the first of which was established in 1884 to effect more satisfactory arrangements between the secondary and higher institutions. The first association was the New England Association of Colleges and Preparatory Schools. Similar associations followed: Association of Colleges and Preparatory Schools of the Middle States and Maryland, 1888; North Central Association of Colleges and Secondary Schools, 1892; Association of Colleges and Preparatory Schools of the Southern States, 1895. [13] Other associations of institutions for a somewhat different purpose also came into existence at about this time. Similarity of character was the binding element. Representative ones are: Association of Land Grant Colleges in 1887; Association of American Universities in 1900; Association of American Colleges in 1914; and American Council on Education, an association coördinating the other associations in higher education, in 1919. (See reports of respective associations.) Obviously, the mutual exchange of experiences and the joint consideration of problems of instruction and administration at the various meetings of the organizations have been beneficial in a general up-toning of the constituent institutions.

Recently educational foundations are also exercising a strong influence in raising the standards of colleges and universities. Among these are the General Education Board, 1903; Carnegie

Foundation for the Advancement of Teaching, 1905; Russell Sage Foundation, 1907; Carnegie Corporation of New York, 1911; Rockefeller Foundation, 1913; and Commonwealth Fund, 1918. [14] Their influence has followed two channels: one in defining standards as a basis for eligibility to the benefits of the charity, the other in making scientific studies. To illustrate the first: In his letter, April 16, 1905, giving $10,000,000 to provide retiring allowances, Andrew Carnegie confined his charity to the teachers of universities, colleges, and technical schools "under such conditions as (the Board of Trustees should) adopt from time to time." [15] In administering the fund the trustees found it necessary for their purpose to define college, university, and technical school and to classify the institutions accordingly. Such classification is stimulating the under-standard institutions to self-appraisal and competitive effort.

Scientific studies are being made extensively by the several foundations in their respective fields, such as social welfare, public health, and professional education. Aside from the contributions on various problems appearing in the annual reports, valuable studies have been made by the Carnegie Foundation for the Advancement of Teaching, such as: *Medical Education in the United States and Canada, Engineering Education, Professional Preparation of Teachers for American Public Schools,* and *Training for the Public Profession of Law.* [16] The various efforts of the educational foundations, usually conducted in coöperation with the professional or institutional associations concerned and welcomed by them, are having very salutary effects upon the quality of higher education.

The state exercises a standardizing influence in granting to institutions of higher education a license to confer degrees, in approving teacher-training institutions for purposes of teacher certification, and in licensing candidates to practice in various professions. Degree-granting power is expressly conferred by the state, either by the legislature or another agency of the state, or by a general grant under corporation laws. In a few states the educational agency of the state is empowered to grant the license to confer degrees and to revoke it in case of failure to comply with standards. These states are: Arkansas, North Carolina, New Jersey, Pennsylvania, and New York (see page 68). Laws governing the certification of teachers [17] and the licensing of prac-

titioners in the professions, such as medicine, law, pharmacy, dentistry, and optometry, are now general in the states. The standardizing influence acts in this way: the institutions which offer training in any one of these fields make it their concern to provide the instruction prescribed as a minimum standard for license. Although this influence is indirect it is effectual.

This brief statement of the four agencies that are raising the quality of higher education indicates the scope of the present tendency toward standardization. The state plays a definite part, yet beyond its direct participation it must be aware of the movement generally, if its fundamental right and duty, as defined by Cubberley, is to formulate minimum standards, raise the standards from time to time, protect the standards, and stimulate communities to additional activity.

Without further comment it is assumed that the three phenomena just considered, namely, the increasing demand for higher education, the conception that higher education is a responsibility of the state, and the present movement toward standardization, bring higher education within the realm of state concern. This being true, interest is directed toward the control of the state over incorporated institutions of higher education. What authority has the state in the control of such institutions? How is state control exercised?

Public institutions, created by the state and under state support, are clearly within the control of the state. (See page 28.) These need not be considered. The question under consideration is, therefore, limited to private institutions. What authority has the state in the control of private incorporated institutions of higher education?

The major question resolves into three minor ones:

1. What is the relationship of the state to the private incorporated institutions under its jurisdiction?
2. What initial control do the states exercise over private institutions of higher education at the time of incorporation?
3. What continuing control do the states exercise over private institutions of higher education after incorporation?

## METHOD

The policies in the relationship of the state to incorporated institutions, as presented herein, appear in those decisions of the

United States Supreme Court which define the authority of the state in matters affecting incorporated institutions, especially insitutions of higher education, and in writings upon the police power of the state and the law of charities. Special attention is given to the authority of the state to incorporate institutions: (*a*) Authority of the state to place limitations upon the powers of an institution at the time of its incorporation, and (*b*) Authority of the state to exercise a continuing control over an institution after incorporation. This is presented in Chapter II.

The status of the initial and continuing control of the states over their private incorporated institutions of higher education is taken from two sources: the general laws of the states governing the incorporation of such institutions, and the charters of a selected number of colleges and universities under private support.

The status of control as found in the laws constitutes Chapter III. For this purpose the codes and statutes of the different states, including the District of Columbia, were examined with special reference to

A. The extent to which states provide for incorporation under general law.
B. Initial control by the state through
   1. A special approving agency.
   2. Limitations in the laws pertaining to property, staff, courses, admissions, and degrees.
C. Continuing control through
   1. Limited tenure of the corporation.
   2. Reserved right to amend or repeal the articles of incorporation.
   3. Regulatory control by the educational agency of the state.

Chapter IV presents the status of the control of the state as defined in the charters of 39 selected private colleges and universities. Included in the selection are all the institutions of higher education established in the Colonial period, and, in addition, the private institutions having an enrollment of 1,000 or more in 1920 as given in the U. S. Bureau of Education, Bulletin 1922, No. 28, *Statistics of Universities, Colleges, etc.* The examination extended to the original charters and all amendments. The history of the institutions and the composition of the managing boards at

present were reviewed in the respective catalogs. Special attention was given in the examination to the following:

A. Laws under which the institutions are incorporated.
B. Initial control of the state through
   1. Limitations pertaining to property, admissions, courses, staff, and degrees.
   2. Limitations in the managing board with respect to approval of the membership by the state, appointment of members by the state, and representation of state officials.
C. Continuing control through
   1. Limited tenure of the institution.
   2. Reservation of power to amend or repeal the charter.
   3. Visitation by the state.

Further special consideration is given to the activity of the respective states in the administration of the Colonial colleges with emphasis upon the attempt of certain of the states to gain greater control over their colleges during the first decades following the revolution.

A compact picture of the treatment of the topic as outlined herein, although disguised in terms of the observations derived from the study, appears in the summary. (See Chart 2, page 96.)

## DEFINITIONS

*State control.*—In general the state refers to the people as a whole comprising a body politic. Specifically, as used in this discussion, the state refers to the agencies of the state: legislative, executive, and judicial, created by the people to conduct the affairs of the political unit known as a state. State control, then, means control by one or more of these agencies or by any of the officers thereof, as the legislature, governor, state board of education, or the state supreme court.

*Institutions of higher education* include colleges, universities, and technical schools requiring secondary education for admission and offering courses looking toward a degree.

*Private incorporated institutions of higher education* are those created under royal charter, special act of the legislature, or general statutes, not under state support, and whose incorporators and successors as a body are granted certain privileges and powers defined in the instrument under which incorporated. Articles of

incorporation define the terms and conditions of association. The charter is the grant of privilege and power by the state and includes all such power and privilege whether defined in the constitution of the state, general corporation law, or special legislative enactment.

*Initial control by the state* refers to control by the state at the time the institution is incorported and extends to the special approval of the articles of incorporation by a state agency, and to the limitations prescribed by the state in general corporation law or in the special act of charter.

*Continuing control by the state* refers to control exercised by the state over an institution after incorporation and includes such means as limited tenure of the institution, reserved power to amend or repeal, supervision through an agency of the state, or representation of state officials on the managing board.

*The educational agency of the state* is the body charged legally with the direction and supervision of public education in the state. It includes the state board of education, state council of education, Regents of the University of New York, and similar agencies under whatever name designated.

*The managing board* of an institution is the body vested with corporate powers to contract, sue, employ, make by-laws for the conduct of the corporation, etc., and it is known by such names as board of regents, board of trustees, and board of governors.

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# CHAPTER II

## AUTHORITY OF THE STATE TO CONTROL AS DEFINED IN DECISIONS OF THE UNITED STATES SUPREME COURT

BRIEF

A. Authority of the state to incorporate institutions.
   Authority to incorporate is necessary.
   Authority to incorporate rests in the state.
B. Authority of the state to place limitations upon the powers of an institution at the time of incorporation.
   The state must grant certain powers.
   The donor has rights in directing the use of his charity.
   The donor may be an individual or the state.
   The right of visitation is exercised in various ways.
   The state has authority to place limitations upon the powers.
C. Authority of the state to exercise a continuing control over institutions after incorporation.
   Action of the state is limited by the Federal Constitution.
   The charter is a contract between the state and the incorporators.
   The state cannot alter vested rights.
   The state can found institutions.
   The state can reserve the right to amend or repeal the charter.
   The state is limited in its power to amend or repeal the charter.
   Courts exercise a continuing control.
   The state may exercise regulatory control.

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In considering the authority of the state over incorporated institutions of higher education it is necessary first to know the policies which underlie the relationship of the state to such institutions, especially: (*a*) The authority of the state to incorporate institutions; (*b*) The authority of the state to place limitations upon the powers of the institutions at the time of incorporation; and (*c*) The authority of the state to exercise a continuing control over institutions after incorporation.

Search for these policies was made primarily in the decisions of the United States Supreme Court because in them are given most

impartially the relationships between the state and incorporated institutions within the state. Further evidence was sought in two writings: Freund's *Police Power;* and Zollman's *American Law of Charities.* The decisions of the courts of the states, except as they served the two authorities, are not included. It must be accepted that, on the question of the authority of the state to incorporate and control educational institutions, the opinions of the United States Supreme Court are final.

## THE AUTHORITY OF THE STATE TO INCORPORATE INSTITUTIONS

*Authority to incorporate is necessary.* Why is it necessary for individuals, who desire to associate for a definite purpose, to secure from the state or another source the powers that will enable them to do business as a body? The answer is found in the characteristics of a corporation. The people who associate to found an institution are concerned that the institution continue to exist beyond the life of any one of them and that the property which they give be used perpetually for the purpose of the association. To meet just such needs the corporation came into existence. It had its origin about the end of the fourteenth and the beginning of the fifteenth century. The principles of corporation, however, existed under Roman law in the "collegium" and "universitas," and were kept alive through ecclesiastical and municipal bodies. [1]

The corporation, then, is an artificial being, created by law, to provide powers which are not inherent in mere association. Among the most important of these is immortality, which provides continuity of the object of its creation beyond the life of its members. Another property is individuality, by which a number of persons may act as a single individual, and, like an individual, manage their own affairs, and hold property without the hazardous and endless necessity of perpetual conveyance for the purpose of transmitting it from hand to hand. [2]

*Authority to incorporate rests in the state.* It is necessary that these characteristics, or powers, not possessed by the individual incorporators, be granted by some authority. "In England the power of creating corporations was an important prerogative of the crown." [3] In the United States it is a prerogative of the state. Says Freund, "The right to act as a corporation depends upon positive legal authority granted by the sovereign." [4] But is the

state the only authority? On this the United States Supreme Court has rendered an opinion.

> The granting of such right or privilege [the right or privilege to be a corporation] rests entirely in the discretion of the State.[1] [5]

That this authority rests in the state is evident in the practice of the states. It will be observed in the succeeding chapter that every state exercises this authority in providing for the incorporation of institutions either through special enactment of the legislature of the state or through general corporation laws of its creation.

### THE AUTHORITY OF THE STATE TO PLACE LIMITATIONS UPON THE POWERS OF AN INSTITUTION AT THE TIME OF ITS INCORPORATION

Since it is in the discretion of the state to grant the right to be a corporation, what authority has the state, in the exercise of this discretion, to place limitations upon the powers of the institution at the time of its incorporation? In other words, how far can the state confine the activities of a corporation by defining in its charter the bounds within which it can operate?

*The state must grant certain powers.* There is implied in the act of incorporating the granting of capacities that will enable the corporation to do business in the pursuance of its purpose. These capacities are evident in the charters of the colleges and in the corporation laws of the states. North Dakota, for instance, in its laws lists them as follows:

> 1. To have succession by its corporate name for the period . . . if not a corporation for profit, perpetually, subject to the power of the legislative assembly as herein before declared.
>
> 2. To sue and be sued in any court.
>
> 3. To make and use a common seal and alter the same at pleasure.
>
> 4. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding in any case any amount limited by law.
>
> 5. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.
>
> 6. To make by-laws not inconsistent with the law of the land for the management of its property, the regulation of its affairs, and for the transfer of its stock.

[1] "State" includes the District of Columbia.

7. To admit stockholders or members to sell their stock or shares for the payment of assessments or installments.

8. To enter into any obligations or contract essential to the transacting of its ordinary affairs, or for the purposes of the corporation. [6]

*The donor has rights in directing the use of his charity.* What is the right of the donor in directing the use of his charity? Has the one who gives property in the founding of an institution any right to say how the property shall be used and who shall manage it? Webster states in his plea before the Supreme Court of the United States in defense of Dartmouth College:

> In early times, it became a maxim, that he who gave the property might regulate in future. *Cuius est dare, eius est disponere.* The right of visitation descended from the founder to his heir as a right of property, and precisely as his other property went to his heir; and in default of heirs it went to the king, for want of heirs, as all property goes to the king. The right of visitation arises from the property. It grows out of the endowment. The founder may, if he please, part with it, at the time he establishes the charity, and may vest it in others. Therefore, if he chooses that governors, trustees or overseers should be appointed in the charter, he may cause it to be done, and his power of visitation will be transferred to them, instead of descending to his heirs. The persons thus assigned or appointed by the founder will be visitors with all the power of the founder. [7]

This policy still exists.

Zollman says:

> An individual who conveys property in trust for charitable purposes has, unless he should assign it to another, what is called visitorial power, in the exercise of which he may prescribe rules for its management and for the administration of the trust, and may govern and control the trustees, inspect their proceedings, and correct abuses in their conduct. [8]

The purposes for which the donor may direct the use of his charity are varied. He may found or support a particular school, college, or university; he may confine his charity to a special need, as a scholarship, or a chair of theology; or he may direct it for the benefit of a definite group, as young men in naval architecture. [9]

The great variety of purpose affirms the policy that the donor may exercise large direction in the use of his charity.[1]

*The donor may be an individual or the state.* The right of the donor to direct the use of his charity applies whether the donor is an individual, or whether the donor is the people of the state acting through their state legislature. An example of the latter is the state university. The legislature of the state, exercising its right for the people as the donor, creates the university by act of legislation, defines its purpose, method of management, and powers; provides for the appointment of the trustees by some state agency, usually the governor; and periodically appropriates money for its support.

It has been noted that the donor may assign his right of visitation to others. Has the state done so as regards the state university? As a donor, the state could assign its right to direct the use of its charity, but in practice it does not. It receives reports, directs policies through appropriations, appoints or elects the members of the board of trustees, and passes legislation in furthering the purpose of the institution.

But in the case of the private institution, where the donor is an individual or group of individuals, the practice is quite the contrary. The customary procedure in the United States is for the donor or donors, under a charter and through the act of incorporation to confer upon the members of the corporation full powers to manage the use of the property, and, in addition, power of visitation. [10] The donor may, as frequently happens, become a member of the board of trustees, but when he transfers his right to

[1] A recent decision of the Massachusetts Supreme Court, September 19, 1925, upheld the inviolability of the purpose of the founders of Andover Theological Seminary in promoting orthodox, trinitarian, Congregationalism. The Visitors of the Seminary, a body of three, especially charged with the responsibility of seeing that the Trustees of the Seminary did not depart from the purpose, objected to a close affiliation which had been entered into by the Trustees of the Seminary and the President and Fellows of Harvard University, whose divinity school is undenominational, on the grounds that such affiliation was contrary to the wishes of the founders. The court supported the contention of the Visitors. The following is quoted from the decision:

> Owners of property may give it in trust to maintain and inculcate any doctrine of Christianity or to promote and extend any particular Christian denomination by training ministers to preach its tenets; and such gift constitutes a charity which will be upheld and protected.
>
> In charity established for training of ministers of religion, not the slightest consideration can be given to present prevalence of religious creed or doctrines to be taught, or to our own beliefs concerning them; the nature of the institution, as declared by the founders, is the single end to be sought.
>
> When the purpose of the charity has become impracticable of execution, on proper proceeding, validity may be directed into another channel under doctrine of cy-pres.

(Visitors of Theological Institution in Phillips Academy in Andover *vs.* Trustees of Andover Theological Seminary. *Northeastern Reporter,* Vol. 148, Sept., 1925, pp. 900 ff.)

direct the use of his charity to the corporation, he has then no power other than as a member of the board.

*The right of visitation is exercised in various ways.* Thinking is made clearer on the right of the donor to direct the use of his charity by citing several ways in which it is exercised. Four ways follow,—two in which the state participates with individuals as donors; two in which individuals alone participate.

1. Without state participation
   *a.* The donor directs the use of his charity. Illustration: Stanford University.
   *b.* The donor assigns to the trustees the direction of the use of his charity. Illustration: University of Chicago.
2. With state participation
   *a.* The private donors through their assignees, and the state as a donor exercise direction over their respective portions of the charity. Illustration: Rutgers University.
   *b.* The private donors and the state both assign the direction of their respective charities to the board of trustees. Illustration: Johns Hopkins University.

*The donor directs the use of his charity. Illustration: Stanford University* (1 [*a*]).—In 1885, Leland Stanford and Jane Lathrop Stanford "desiring to promote the public welfare by founding, endowing, and having maintained upon (their) estate known as the Palo Alto Farm, and situated in the counties of San Mateo and Santa Clara, State of California . . . a university for both sexes, with the colleges, schools, seminaries of learning, mechanical institutes, museums, galleries of art, and all other things necessary and appropriate to a university of high degree" [10] secured from the state of California the passage of an act, March 9, enabling them to found the institution which now bears the name of Leland Stanford Junior University. Recognition by the state of the right of Mr. and Mrs. Stanford to direct the use of their donation is evident in the enabling act:

Sec. 3. The person making such grant may therein designate: [There follow provisions for the nature and object of the institution, the name of the institution, appointment of trustees, and location of the institution.]

Sec. 5. The person making such grant, by a provision therein, may elect, in relation to the property . . . conveyed and in relation to the erection, maintenance and management of such institution or institu-

tions, to perform during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the Trustee or Trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance, and management of such institution or institutions, perform all the duties and exercise all the powers which, by the term of the grant, are enjoined upon and vested in the Trustee or Trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the Trustee or Trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the Trustees named in the grant and their successors.

Sec. 6. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in subdivisions one to six inclusive, of section two (three) thereof; and may also therein reserve the right, during the life of such person or persons, of absolute dominion over the personal property conveyed, and also over the rents, issues, and profits of the real property conveyed, without liability to account thereof in any manner whatever and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same absolute dominion over such personal property, and such rents, issues and profits, without liability to account thereof in any manner whatever, and without liability over against the estate of either of the spouses. [12]

Briefly, from above, it is observed that the state of California granted authority to the donors to exercise without assignment to trustees, if they wished, absolute control over their charity. They were empowered to designate the purpose, nature, and location of the institution; to define the managing board, and, if they desired, exercise sole power of management; and to alter or modify the terms and conditions of the organization and conduct of the institution. This was an exceedingly generous grant of authority and recognition of the rights of the donor.

Mr. and Mrs. Stanford, in accordance with this act, founded Leland Stanford Junior University by a decree executed November, 1885, and filed in the office of the Recorder of Santa Clara County. They conveyed to twenty-four trustees, whom they named, and their successors certain specified property, gave them power to manage and control the institution and the trust property, to make by-laws, to employ officers, and do

> all things necessary to the proper exercise and discharge of their trust; subject, however, to the reservation that the grantors may elect to control the property and the execution of the trust during their lives . . .

and to the right to

> alter, amend or modify the terms and conditions of this grant, and the trusts therein created, in respect to the nature, object and purposes of the institution founded, the powers and duties of the Trustees, the manner in which, and to whom, they shall account, the mode and manner, and by whom, the successors shall be appointed, the rules and regulations for the management of the property conveyed, the time when, and the character and extent of, the buildings which shall be erected, the right to provide for trades and professions which shall be taught in the institution, and the terms upon which scholarships shall be founded. [13]

Other restrictions were made, not necessary to include here for the purpose of illustration.

Mrs. Stanford made several amendments to the founding grant. The decree of 1902, October 3, not only provided minor changes in the administration of the property but recited her desires concerning the larger policies of the institution in maintaining the highest standards of education and public coöperation. In her last decree, June 1, 1903, she relinquished all her rights to the property and vested sole management in the trustees. [14]

An illustration of a different character, in which the state recognizes the privilege of the donor, is the University of Minnesota. During the first years of the life of the institution when finances were sought for its development, the state of Minnesota, in the Act of 1860, inserted the following clause to encourage contributions:

> Any person or persons contributing a sum of not less than fifteen thousand (15,000) dollars, shall have the privilege of endowing a Pro-

fessorship in the University, the name and object of which shall be designated by the Board of Regents. Said person or persons shall have the right to nominate Trustees for the care of the endowment, also an individual to fill the Professorship, and a Regent who shall have the same rights and privileges as those appointed in behalf of the State. [15]

Such practice has been discontinued. The act of 1868 omitted the right to nominate trustees and regent and to name the professor. [16]

*The donor assigns to the trustees the direction of the use of his charity. Illustration: University of Chicago* (1 [*b*]).—In his letter of December 13, 1910, to the President and Trustees of the University of Chicago, making his final gift of approximately $10,000,000 to the University, John D. Rockefeller assigned the direction of his charity to the trustees in these words:

> In making an end of my gifts to the University, as I now do, and in withdrawing from the board of trustees my personal representatives, whose resignation I enclose, I am acting on an early and permanent conviction that this great institution, being the property of the people, should be controlled, conducted, and supported by the people, in whose generous efforts for its upbuilding I have been permitted simply to coöperate. [17]

The letter contains the desire that $1,500,000 be used for the erection and furnishing of a university chapel. Apart from this the remainder of the funds are to be used "in the discretion of Trustees, for lands, buildings, or endowment, but no part of the principal sum shall be used for current expenses." [18] It is the practice to assign to the trustees of an institution, within the purpose, the sole direction of the use of the donation. Examination of the donations to various colleges and universities supports this view.

Restricting the use of a donation to a specific purpose at the same time limits the use of the fund if the purpose ceases to command the prominence it had at the time the gift was made. Two practices at present obviate this. When a gift is made for a specific purpose, it is becoming the policy to insert in the letter of grant a clause permitting the trustees to use the donation for other purposes. This policy is followed by the Carnegie and Rockefeller Foundations. The following clause from the "Act of Incorpora-

tion of the Carnegie Foundation for the Advancement of Teaching" illustrates:

> In general, to do and perform all things necessary to encourage, uphold, and dignify the profession of the teacher and the cause of higher education in the United States, the Dominion of Canada, and Newfoundland aforesaid, and to promote the objects of the Foundation, with full power, however, to the Trustees . . . to modify the conditions and regulations under which the work shall be carried on, so as to secure the application of the funds in the manner best adapted to the conditions of the time: And provided, that such corporation may by a vote of two-thirds of the entire number of Trustees enlarge or vary the purposes herein set forth, provided that the objects of the corporation shall at all times be among the foregoing, and kindred thereto. [18]

The other practice is to give the donation as an endowment which trustees use at their discretion. During the year, 1919-1920, there was given by various benefactors as endowment to institutions of higher education the sum of $50,906,762. [19]

*The private donors through their assignees, and the state as a donor exercise direction over their respective portions of the charity. Illustration: Rutgers University* (2 [*a*]).—Rutgers University was founded as Queens College under a charter from George III in 1766. The petitioners for the charter were ministers and members of the Dutch Reformed Church in New York and New Jersey; and the primary purpose of the institution was to provide instruction in the "learned languages and other branches of useful knowledge" (especially to prepare "young men of suitable abilities . . . for the ministry"). [20] In 1825, after receiving generous gifts from Colonel Henry Rutgers of New York, the trustees secured an amendment from the legislature of New Jersey changing the name from Queens College to Rutgers College. The board of trustees named in the charter of 1766 were forty-four in number, of whom four were ex-officio officers of the state—the governor, president of the council, chief justice, and the attorney general. [21] With the exception of the president of the council the composition of the board has not changed. To this board the several donors, including Colonel Rutgers, assigned their right in the direction of the use of their gifts.

In 1862, New Jersey became the beneficiary of script for public lands granted to the state by act of Congress, for the advancement

of instruction in agriculture and the mechanic arts. Rutgers College was designated by the legislature of New Jersey in 1864 as the institution to receive the interest from the funds derived from the sale of the script, under the condition that the trustees devote the interest wholly and exclusively to the purpose designated by the act of Congress, and "in that department of Rutgers College known as Rutgers Scientific School." [22] Through this grant the state of New Jersey, acting for the United States, became a donor to the property of Rutgers College.

In order that the state retain supervisory control over the funds in question the state provided in the Act of 1864 for a board of visitors "appointed by the governor with the advice and consent of the senate, consisting of ten persons, two from each congressional district . . . who shall hold their office respectively for five years," [23] and defined their powers as follows:

> It shall be the duty of the board of visitors to visit the said school (Rutgers Scientific School) at least twice in each year, and to make report thereon to the legislature during the second week of the annual session. [23]
>
> . . . the board of visitors shall possess general powers of supervision and control, and shall report to the legislature such recommendations as to them may seem proper. [24]

Rutgers University, then, illustrates the situation in which the state exercises supervision over the charity for which it is responsible, the trustees exercising it for the remaining donors.

*The private donors and the state both assign the direction of their respective charities to the board of trustees. Illustration: Johns Hopkins University* (2 [*b*]).—Johns Hopkins University was incorporated August 24, 1867, at Baltimore, Maryland, with a board of trustees of twelve members, life tenure, to direct the use of the donation of Johns Hopkins, a merchant of Baltimore, who bequeathed the greater part of his estate for the establishment of a university and hospital and for the promotion of education in Maryland. Other gifts were added from time to time. In addition, the state legislature of Maryland made generous appropriations to the university. By act of the legislature at its session of 1922, the sum of $600,000 was appropriated for the purpose of constructing and equipping a building for a school of technology,

with an annual appropriation of $50,000 for maintenance. The legislature further appropriated annually $25,000 for general purposes for 1923 and 1924. These grants were given without any reserved power or provision for visitation by the state. [25] It is not necessary to cite further donations from the state. These are sufficient to show that it is the practice of the state of Maryland to make donations to Johns Hopkins University without retaining control over their use. By this procedure the state assigns its right of visitation, as do the private donors, to the trustees of the institution.

It may now be summarized from the foregoing that the donor, whether private or state, has the right to direct the use of his charity. This he exercises himself or assigns to the trustees of the institution.

*The state has authority to place limitations on the powers of the institution at the time of its incorporation.* The question under consideration is this: To what extent may the state, in the exercise of its authority to grant the right to be a corporation, place limitations upon the powers of the institution at the time of incorporation? It has been noted that certain powers must be granted to enable the corporation to do business, and that the donor has a right to determine the use of his charity. In these two respects, then, the state is circumscribed in the limitations which it may place upon the corporate powers. But, in the discharge of its responsibility for the welfare of the state, it may make any limitation which public policy dictates. The Supreme Court of the United States has rendered an opinion in the case of Horn Silver Mining Company versus New York, 143 U. S. 313, in these words:

> The granting of the rights and privileges which constitute the franchises of a corporation being a matter resting entirely within the control of the legislature, to be exercised in its good pleasure, it may be accompanied with any such conditions as the legislature may deem most suitable to the public interests and policy.

That the state has not placed many limitations, and that the public interest and policy has not demanded it, with regard to institutions of higher education is evident in the laws of the several states governing their incorporation. It is observed in a subsequent chapter that over half the states place no limitations upon the

tenure of educational corporations, the amount of property which they hold, the requirements for admission and degrees, or the courses of study. (See page 58.)

The answer to the question concerning the authority of the state to place limitations upon the corporate powers of an institution of higher education may be thus briefly summarized. The state has power to place upon the corporate powers of an institution of higher education at the time of its incorporation whatever limitations it deems best in the interest of public policy. In view, however, of the right of the donor to direct the use of his charity, and the policy of the state to promote education as a worthy charity, states have placed few limitations upon the powers of educational corporations.

### THE AUTHORITY OF THE STATE TO EXERCISE A CONTINUING CONTROL OVER AN INSTITUTION AFTER INCORPORATION

It was observed in answer to the preceding question, that the state has the authority to exercise an unlimited initial control over the corporate powers of an institution. When, however, the corporate powers are once granted to the institution by the state what continuing control may the state exercise over those powers? Can the state alter any of the vested rights in the charter of the institution without the consent of the trustees? What are some of the vested rights?

In addition to the corporate powers cited in the laws of North Dakota (see page 14) the articles of incorporation of an educational institution of higher education names the incorporators, institution, and the place of business; states the purpose of the institution; defines the board of trustees as to number, method of appointment, and tenure; usually grants power to confer degrees, diplomas, and honors; and prescribes any conditions that either the state or the incorporators wish safeguarded. Within these vested rights the trustees conduct business. Can these rights be changed by the state without the consent of the trustees?

*The action of the state is limited by the Federal Constitution.* The state is not entirely sovereign in its power. Provisions were placed in the Federal Constitution that safeguard certain inalienable rights. Two of the restrictions are pertinent to the consideration of the present question. The state cannot "deprive any person of life, liberty, or property, without due process of law." [26]

Neither can the state pass any "law impairing the obligation of contracts." [27] These restrictions are limits to the action of the state.

*The charter of an educational institution is a contract between the state and the incorporators.* Citation is made again of the famous Dartmouth College case since it bears so directly upon the whole problem of state control over incorporated educational institutions and applies so definitely to the question at hand. In this instance the state of New Hampshire by act of legislature, June 27, 1816, attempted to change materially the charter of Dartmouth College, granted by the Crown in 1769, in an effort to secure a greater control over the affairs of the College. The legislature sought to increase the number of trustees from twelve to twenty-one, to give the appointment of the additional number to the governor, and to provide for a board of overseers with power to "inspect and confirm, or disapprove and negative, such votes and proceedings of the board of trustees as shall relate to the appointment and removal of the president, professors, and other permanent officers of the university, and determine their salaries; to the establishment of colleges and professorships, and the erection of new buildings." [28] The board of overseers was to consist of twenty-five persons. The president of the senate and the speaker of the house of representatives of New Hampshire, and the governor and lieutenant-governor of Vermont were to be ex-officio members; the remaining members were to be appointed by the governor and council of New Hampshire.

The trustees of Dartmouth College did not accept the proposed change, whereupon the legislature passed amendments to carry the act into effect. The College objected further and the case came before the Supreme Court of the United States where the cause of the College was ably defended by Daniel Webster with Chief Justice Marshall presiding. It was argued for the plaintiff that the College was a private corporation; that the charter was a contract within the meaning of the provisions of the Federal Constitution, Article 1, Section 10, and that the act of the legislature impaired the contract without the consent of the trustees. The defendants argued that the act of the legislature was not repugnant to the Constitution of the United States in that the contracts which the drafters of the Constitution had in mind were personal contracts and did not contemplate grants of power by a state; and that, since

the state had been a contributor to the support of the College, the College was not a private charity but a public institution and subject to control by the state. [29]

Chief Justice Marshall gave the decision for the court in 1819, digested as follows in the introduction to the case:

> The charter granted by the British crown to the trustees of Dartmouth College in the year, 1769, is a contract within the meaning of the clause of the constitution of the United States (Art. 1, Sec. 10) which declares, that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the revolution.
>
> An act of the state legislature of New Hampshire, altering the charter, without the consent of the corporation, in a material respect, is an act impairing the obligation of the charter, and is unconstitutional and void.
>
> Under its charter, Dartmouth College was a private and not a public corporation; that a corporation established for purposes of general charity, or for education generally, does not, per se, make it a public corporation, liable to the control of the legislature. [30]

The influence of the Dartmouth College decision was far reaching. The decision, as well as the general intense discussion of the case at the time, helped to clear the confused thinking regarding the relationship of the state to its chartered institutions. Further, it gave a new direction to the efforts of the state to control institutions of higher education. Three results may be cited briefly to show the effect of the decision upon the question of continuing supervision by the state over incorporated institutions.

*The state cannot alter vested rights.* First, the decision safeguarded to the early colleges the rights which had been granted to them by the Crown or the Colonial governments, and guaranteed to all future institutions an independence in the exercise of chartered rights without fear of state interference. Webster, in his plea before the court, pointed out possible evils, had the decision been otherwise.

> It will be a dangerous, a most dangerous, experiment to hold these institutions subject to the rise and fall of political parties, and the fluctuation of political opinions. If the franchise may be, at any time, taken away or impaired, the property also may be taken away, or its use perverted. Benefactors will have no certainty of effecting the object of their bounty; and learned men will be deterred from devoting themselves to the service of such institutions. . . . Colleges

and halls will be deserted by all better spirits, and become a theatre for the contention of politics. [31]

Justice Story, associate upon the bench of the Supreme Court at the time of the Dartmouth College case, rendered an opinion supplementing that of Chief Justice Marshall in which he stated specifically some of the rights which the state can not alter:

Unless a power be reserved for this purpose, the crown cannot, in virtue of its prerogative, without the consent of the corporation, alter or amend the charter, or divest the corporation of any of its franchises, or add to them, or add to, or diminish, the number of the trustees, or remove any of the members, or change or control the administration of the charity, or compel the corporation to receive a new charter. [32]

*The state can found institutions and control them.* The second result of the Dartmouth College decision to be noted is its influence in suggesting the alternative that states could establish institutions entirely under their control. It is aside from this discussion to consider the development of state institutions of higher education, but it may set the question of the control of the private institutions in better relief to cite the suggestions in the decision which contributed toward the development of institutions under the state. It is certainly pertinent to contrast the difference between the authority of the state over its own institutions and those established under private charity. This difference is pointed out by Chief Justice Marshall as is shown by the following quotation from his decision:

If the act of incorporation be a grant of political power, if it create a civil institution, to be employed in the administration of the government, or if the funds of the college be public property, or if the state of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which the legislature of the state may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States. But if this be a private eleemosynary institution, endowed with a capacity to take property, for objects unconnected with government, whose funds are bestowed by individuals, on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds, in the manner prescribed by themselves; there may be more difficulty in the case, although neither the persons who have made these stipulations, nor those for whose benefit they were made, should be parties to the cause. [33]

Again, he states:

> That education is an object of national concern, and a proper subject of legislation, all admit. That there may be an institution, founded by government, and placed entirely under its immediate control, the officers of which would be public officers, amenable exclusively to government, none will deny. [34]

Just how far these statements contributed toward the development of state institutions cannot be determined. It is reasonable to believe that they must have been registered in the minds of the large number who were intent on securing a greater control over the private institutions, and who followed so closely the progress of the case as it was being considered by the Supreme Court.

*The state can reserve the right to alter or repeal the charter.* A third result from the Dartmouth College decision was increased activity by the states in reserving to their legislatures the power to amend or repeal charters of colleges and universities established subsequent to the decision. Cases in point are:

Georgetown University, Washington, D. C., 1789.
Western Reserve University, Cleveland, Ohio, 1826.
New York University, New York, N. Y., 1831.
Tufts College, Massachusetts, 1850.
Northwestern University, Chicago, Ill., 1851. (See Table I.)

In the charters of these institutions is a clause reserving to the state legislature the power to change or repeal the charter. For instance, the charter of Tufts College, incorporated by the General Court of Massachusetts, 1850, contains this provision:

> The legislature of this Commonwealth may grant any further powers to alter, limit, annul, or restrain any of the powers vested by this act in the said corporation, as shall be found necessary to promote the best interests of said college, and more especially may appoint and establish overseers or visitors of said college, with all necessary powers for the better aid, preservation, and government thereof. [35]

It cannot be said that this right to amend, etc., had its origin in the Dartmouth College decision. The state of Connecticut had reserved in the charter of Yale College, 1745, that all the laws made by the "President and Fellows" "be laid before (the) assembly as often as required . . . to be repealed or disallowed by (the) assembly when they shall think proper." [36] And the state of

New York in establishing the Regents of the University of New York, 1784, empowered them not only to grant charters but to amend or repeal them. [37] Yet in the Dartmouth College decision, it was pointed out by Justice Story that it was necessary for the state, if it wished to continue control, to make the reservation in the charter. His words are:

> If the state legislature mean to claim such authority (referring to taking away powers or otherwise exercising restraints) it must be reserved in the grant. [38]

The foregoing observations on the Dartmouth College decision may now be summarized under three points:

1. The charter granted by a state to an incorporated institution is a contract and the vested rights in the charter cannot be altered without the consent of the trustees.
2. The state may establish institutions of its own over whose transactions it may act according to its own judgment.
3. The state may reserve in the charter of the institution the right to amend or repeal it.

*The state is limited in its power to amend a charter.* Is the state, acting within its authority to amend or repeal a charter when so reserved, limited in any way in the changes that it may make? In the case of Berea College *versus* Kentucky the question of the power of the state to amend or repeal was under consideration. Berea College was organized under the authority of an act for the incorporation of voluntary associations, approved March 9, 1854 (*2 Stanton Rev. Stat. Ky.,* 553), which in terms reserved to the General Assembly "the right to alter or repeal the charter of any association formed under the provisions of this act." In June, 1899, the College was reincorporated (provisions of *Ky. Stat.,* Chap. 32, Art. 8), the charter defining its purpose in these words, "Its object is the education of all persons who may attend." The Constitution of 1891 provided in its bill of rights (No. 3) that "every grant of a franchise, privilege or exemptions shall remain, subject to revocation, alteration or amendment." (*Carroll's Ky. Stat.,* 1903, p. 86.) The College was operating under these reservations.

*Acts of Kentucky,* 1904, Section 1, Chap. 85, p. 181, prescribed:

> That it shall be unlawful for any person, corporation or association of persons to maintain or operate any college, school or institution

where persons of the white and negro races are both received as pupils for instruction, and any person or corporation who shall operate or maintain any such college, school or institution shall be fined $1,000. . . .

The College did receive both races for instruction and was indicted by the grand jury of the county in October, 1904. It was decided in the court that the College was guilty of violating the statutes of the state, and the fine was imposed. The College then carried the case to the Supreme Court of the United States which sustained the decision in November, 1908. It was held that the state acted within its power under the reservation to amend, and that the action taken did not impair the object of the grant or vested rights contained in the charter. [39] Of special application here is that part of the opinion which points out the limitation of the state in its power to amend. Justice Brewer made this statement:

It is undoubtedly true that the reserved power to alter or amend is subject to some limitations, and that under the guise of an amendment a new contract may not always be enforceable upon the corporation or the stockholders; but it is settled that a power reserved to the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it, and which the legislature may deem necessary to secure either the object or any public right. [40]

Freund supports this position. He says:

The power to alter or amend does not extend to the taking of the property either by confiscation, or indirectly by other means . . . in other words, the legislature may not destroy vested rights. [41]

It is therefore evident that the state where it has reserved the power to amend a charter is limited to action which does not impair substantially the rights vested in the charter or the object of the grant.

*The courts exercise a continuing control over corporations.* It is possible that trustees may abuse the rights and privileges granted to them in the charters of the institutions they manage or misuse the funds entrusted to them. What guarantee is there that the

wish of the donors will be carried out or that public interests will be safeguarded? On this point Zollman says:

> Being public utilities of a very high order, charities are intimately associated with the state which exercises over them through its courts a watchful supervision, so that their property, funds and revenues shall not be diverted to any improper purpose, and that trustees and agents shall perform the duties assigned to them with honesty and fidelity, and for the best advantage of the charitable uses designed by the donor or donors. [42]

Again the United States Supreme Court says:

> When a charitable trust has been fully constituted, and the funds have passed out of the hands and control of the donors, and into the hands of the proper institution, or organization, intended for its administration, the Court of Chancery, or some analogous jurisdiction, becomes its legal guardian and protector, and will take care that the objects of the trust are duly pursued, and the funds rightly appropriated. [43]

Zollman says further with reference to the obligation of the state to safeguard the use of the trust:

> In order that the trust may be maintained, it is, therefore, not only the right, but the duty of the state, through its law officers, to take action for their maintenance and enforcement. The duty is exercised in America as in England through the attorney general, who, therefore, is a proper, though he may not be necessary, party plaintiff or defendant as the representative of the public. [44]

These quotations are sufficiently clear without further comment. The court is the proper agency to determine whether trustees are performing their duties with honesty and fidelity. It is the duty of the state through its officers to take action that will maintain the trust.

A recent case before the Supreme Court of the United States illustrates the continuing control of the state over educational corporations through the courts. The National Association of Certified Public Accountants was incorporated under the Code of the District of Columbia, Section 559, which authorizes certain citizens of the United States,

> a majority of whom being also citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary,

musical, scientific, religious, or missionary purposes, and societies formed for mutual improvement or for the promotion of the arts, to form a corporation by filing in the office of the recorder of deeds a certificate in writing, which shall state the name adopted, the term for which the corporation is organized, its particular business and objects, and the number of its managers for the first year of its existence. [45]

No mention whatever of degrees is made in this section of the code. The certificate which was filed by the organizers of the corporation provided that when the members of the corporation presented

satisfactory evidence of knowledge in the theory and practice of accounting and . . . satisfactorily passed the prescribed qualifying examination of the association [45]

the corporation would

admit said members to the degree of certified public accountant. [45]

During nine months of the existence of the corporation more than 2,500 certificates were issued at ten dollars apiece. It was suspected that degrees were granted without satisfactory examination of the applicant's qualification. Persons residing in California presented to the corporation the name of a fictitious person and on recommendations, wholly unknown to the corporation, a certificate was issued.

The district attorney of the District of Columbia filed a bill asking for an injunction prohibiting the National Association of Certified Public Accountants from exercising the power to confer the degree of certified public accountant, or any other degree, upon any person, on the ground that it had no lawful right to do so. Appeal from the supreme court of the District of Columbia was made February 14, 1923. Decision was rendered by the Supreme Court of the United States on June 4, 1923. It was held that the corporation had no power to confer degrees since it was not expressly conferred. [46] It was also stated as an opinion that

. . . where a corporation having the power to confer degrees sells its degrees, without reference to the buyers' qualifications, its charter may be forfeited for misuse of its franchise. [46]

In this case the corporation assumed powers not expressly granted and misused its franchise by granting degrees without due con-

sideration to the qualification of the person seeking the degree. The public interest was safeguarded by the court under action instituted by the district attorney.

*The state may exercise regulatory control.* The authority of the state to exercise a continuing control over incorporated institutions of higher education through reserved power to amend or repeal a charter has just been considered. It may be enquired further: What continuing control may a state exercise over an educational corporation by regulatory legislation in the interest of public welfare? For instance: Can a state require such an institution to maintain instruction of a certain standard as prerequisite to granting a degree? Can the state require the institution to submit reports on its business, including incomes and expenditures, enrollment, and personnel? Can the state empower an agency to visit and inspect and report on the condition of the institution?

That states are so authorized may be inferred from the fact that several states do provide regulatory control over incorporated institutions of higher education and place responsibility for it in some state agency, usually the state board of education. The earliest and most extensive provision in this regard is the Regents of the University of New York, the educational agency of the state of New York, which has power to maintain standard instruction, to visit and inspect, and to report on the condition of the institutions of the state. Other states providing some or all of these powers are: Arkansas, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Ohio, and Pennsylvania. The provisions in the laws of these states are presented in Chapter III. (See page 68.)

What opinions from Supreme Court decisions indicate the authority of the state to regulate incorporated institutions of higher education? Unfortunately, the writer has not located any such decisions bearing directly on state regulation over the institutions of higher education. However, certain opinions in the case of the Oregon Public School Law (Society of the Sisters of the Holy Names, etc. *versus* Pierce, 296 *Federal* 928) recently decided, June, 1924, are stated generally and may be said to apply in principle to higher education.[1] There was in question the authority of the state to require all children, with a few exceptions, between the ages of

[1] The institutions represented by the Society of the Sisters of the Holy Names are incorporated.

eight and sixteen to attend public schools. The people of Oregon through an initiative petition approved such action. The affirmative argument printed in the official pamphlet prior to the election, after stating a belief in "the free and compulsory education of the children of our nation in public primary schools supported by public taxation," appealed to the people "to mix the children of the foreign-born with the native-born, and the rich with the poor," and "to mix those with prejudices in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product—a true American. . . . A divided school can no more succeed than a divided nation." [47] This was an effort of the state to regulate education in the interest of public welfare. It was held in the decision, that the act was a violation of the Constitutional Amendment 14, in that it deprived private and parochial schools of property without due process of law, and infringed the liberty of parents and guardians in sending their children and wards to such schools as they might desire. [48]

The following statements in the decision bear directly upon the authority of the state to regulate education. The state may reasonably regulate:

> No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to public welfare. [49]

The state cannot standardize its children:

> The fundamental theory of liberty upon which all governments in the Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations. [50]

The enactments of a state, if unwarranted, will be set aside:

> The state legislature is not the final judge of limitations of the police power, but its enactment will be set aside when found to be an unwarranted, arbitrary interference with the constitutional right to

carry on a lawful business or occupation, and to use and enjoy property. [51]

From the foregoing it is observed that the state has reasonable authority to regulate all schools, both public and private, but in doing so must not arbitrarily interfere with constitutional rights. In the exercise of this authority, as it pertains to institutions of higher education, Freund says:

> The state has power to control the education of minors, and in doing so may further the interest of nationality, but where minors are not concerned, the pursuit of truth and learning must be absolutely free. The principles are so fully recognized by the practice of legislation that they stand unquestioned, even if lacking express judicial confirmation. [52]

SUMMARY

Authority rests with the state to incorporate educational institutions. In the exercise of this authority it may place upon the corporate powers of the institution at the time of incorporation whatever limitations it deems best in the interest of public policy. However, the state must grant to the corporation the powers necessary for it to do business in the pursuance of its purpose. It respects the right of the donor to direct the use of his charity, either himself or through trustees to whom he assigns his right.

After incorporation the state may exercise a continuing control through a reserved power to alter or repeal the charter, through the courts, or through general regulatory legislation. The exercise of this continuing control, even though power to alter is reserved, cannot defeat or substantially impair the object of the grant or any rights vested under the charter. Control through the courts is directed primarily to safeguarding the proper pursuance of the objects of the trust and the right appropriation of the funds. General regulatory legislation has for its purpose the maintenance of instruction of a quality in keeping with public welfare. However, any enactments must not be an unwarranted, arbitrary interference with the constitutional right to carry on a lawful business, and to use and enjoy property.

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# CHAPTER III

## STATE CONTROL AS PROVIDED IN THE LAWS OF THE STATES

BRIEF

A. Laws under which the states incorporate institutions of higher education:
The state incorporates an institution either through special act of the legislature or through general corporation law.

B. Initial control:
Fewer than one-half of the states provide for special approval of the articles of incorporation.
Approval by the educational agency is required in ten states.
A few states only prescribe minimum requirements in their laws as regards property, number of professors, courses of study, admissions, and degrees.

C. Continuing control:
Nine states limit the tenure of incorporated institutions.
Six states reserve to the legislature the right to amend or repeal the articles of incorporation.
Seven states provide regulatory control through the educational agency.

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The preceding chapter defines the authority of the state to incorporate institutions of higher education, place limitations upon the powers of the institutions at the time of incorporation, and exercise a continuing control over them after incorporation. The present inquiry is: What have the states done in the exercise of this authority? The answer is sought through two channels: (*a*) The laws of the states governing the incorporation of institutions of higher education; (*b*) The charters of private colleges and universities.

This chapter is concerned with control as defined in the laws of the states. Examination was directed especially to the corporation laws and, in them, to the provisions which limit the powers of institutions at the time of incorporation and which provide continuous supervision over their conduct after incorporation. The state control in the laws is treated under the following topics:

1. Initial control through
   *a*. The agency responsible for the approval of the articles of incorporation.
   *b*. Minimum requirements in the laws pertaining to property, staff, courses, admissions, and degrees.
2. Continuing control through
   *a*. Limited tenure of the institution.
   *b*. Reservation of power to amend or repeal.
   *c*. Regulation by the educational agency of the state.

## LAWS UNDER WHICH THE STATES INCORPORATE INSTITUTIONS OF HIGHER EDUCATION

*The state incorporates an institution either through special act of the legislature or through general corporation law.*[1] Before passing to the consideration of the elements of control in the laws of the states it is well to note the procedure followed by the states in exercising their authority in incorporating institutions. Two procedures are followed: Either the state grants a charter to an institution by an act of the legislature or the state provides for incorporation through a general corporation law. Under the latter, a general law usually defines the procedure which those who wish to incorporate must follow; prescribes the necessary elements in the articles, as the name, place of business, purpose, managing board, and tenure; and adds any limitations which the state wishes to impose. Incorporation under general laws is the usual procedure. Table I, facing page 68, shows for the forty-eight states and the District of Columbia that

Thirty-five states provide for incorporation under general law only.

Three states provide for incorporation under legislative enactment only.

Eleven states provide for incorporation under either the legislature or general law.

Since it is the tendency for the states to provide for incorporation under general law such procedure must have distinct advantages. W. R. Hood of the United States Bureau of Education gives two. By this procedure (*a*) states can pursue a constant

[1] The writer was aided in the examination of the laws by having at hand a digest of the laws recently compiled by Mr. William R. Hood, Assistant Specialist in School Legislation, United States Bureau of Education. This was loaned to him previous to publication through the courtesy of the Bureau.

and consistent policy with respect to corporate franchises, and (b) charters are less subjected to the influences of politics. [1] Probably no one would question these advantages. Yet they should not be accepted without further consideration. Do the general laws empower some agency, qualified to pass judgment on educational matters, to approve the articles of incorporation? Or does the agency pass upon the completeness and legality of the instrument only and file it as a clerical duty? If the latter, it may be questioned whether the best interests of the public are always safeguarded when an institution is established. What do the laws provide on this point?

### INITIAL CONTROL

*Fewer than one-half of the states provide for special approval of the articles of incorporation.* Several practices are followed in the different states in the matter of approving articles of incorporation of institutions of higher education. The detail of the procedure is not so much the concern here as the means provided for approving the articles. Who approves the articles of incorporation before they are filed and the institution is authorized to enter upon its business? What is approved? The following summarizes the various agencies which approve, with the number of states so providing.

| *Agency*[1] | *Number of States* |
|---|---|
| Governor | 1 |
| State charter board or corporation commission | 6 |
| Secretary of state | 2 |
| County judge or judge of circuit court | 7 |
| Filed with secretary of state or county clerk without special approval | 28 |
| Educational agency | 10 |

Nine states provide for approval by the governor, secretary of state, or some commission. None of these are educational agencies. For instance, the charter board of Kansas is composed of the attorney-general, secretary of state, and state bank commissioner and determines that the business is one for which the

[1] Five states are counted twice. In Georgia, North Carolina, Ohio, and Oklahoma, the educational agency grants license to confer degrees, but not necessarily at the time of incorporation. In Pennsylvania the judge of the county approves upon recommendation of the educational agency.

corporation may lawfully be formed, and that the applicants are acting in good faith. [2] In Nebraska the special commission appointed by the judge of the county in which the institution is located "personally examines the property, funds and securities alleged to be set apart for the purpose . . . and appraises the same, and reports the facts thus ascertained to the judge." [3] In Arizona, Oregon, New Mexico, and Virginia, the articles of incorporation are filed with the state corporation commission. Connecticut and Michigan require the secretary of state to approve the articles as well as to file them. The county judge or judge of the circuit court in seven other states, empowered to pass upon the articles, considers primarily the legality of the instrument, or, as in the case of Pennsylvania, considers whether the charter is "injurious to the community." This brief recital of the provisions in fifteen states leads to the observation that, although special consideration is given to the articles of incorporation by the governor, a commission, the secretary of state, or a judge, primary concern is with the conformance of the articles to the legal requirements. The functions of these men being other than educational, it is seriously questioned if they are competent to pass the best judgment upon the necessity for the institution and the quality of its proposed service from the point of view of education.

In twenty-eight other states, including the District of Columbia, the action of the county clerk, recorder of deeds, or secretary of state is largely clerical and confined to the filing of the articles, and the issuance of a certificate of incorporation.

It may be observed at this point that the incorporation of institutions under corporation laws of general application remove new institutions from the scrutiny of a special approving agency, except where provision for special approval is defined in the law. Formerly, when a charter was sought from a legislature, the character of the incorporators and the purpose of the proposed institution were exposed to the examination of the legislators and indirectly to the public. How thorough such an examination was is not pertinent to this study. Present concern is with the fact that laws now existing, under which institutions of higher education may be incorporated, do not generally make provision for special examination of the intent of the incorporators and the ability of the institution to fulfil its proposals. The states that

make provision for special approval by the educational agency, in an effort to satisfy this omission, deserve consideration.[1]

*Ten states empower the educational agency to approve articles of incorporation or grant license to an institution to confer degrees.* To what does the educational agency give attention in passing upon the articles? What is the extent of its authority? In order that the provisions in the laws on these points may be given proper consideration, the clauses that apply are cited:

*Arkansas*

Said board [board of education] shall have sole power to grant charters to academies, colleges, universities, and all other higher institutions of learning, determine what institutions may confer degrees and under what conditions. . . .

In dealing with charters the Attorney General shall be consulted and no rule shall be adopted or order issued without his approval. [4]

*Georgia*

No charter giving the right to confer degrees or issue diplomas shall be granted to any proposed institution of learning within the State of Georgia until the proper showing has been made to the State Board of Education that the proposed University, College, Normal or Professional School shall give evidence of its ability to meet the standard requirements set up by the State Board of Education. [5]

*Massachusetts*

Whoever intends to present to the general court a petition for the incorporation of a college, university or other educational institution with power to grant degrees, or for an amendment to the charter of any existing educational institution which will give it such power, shall on or before November first prior to its intended presentation, deposit the same in the office of the department of education. . . . Said department shall transmit said petition to the general court during the first week of the following session with the recommendations relative thereto. [6]

*North Carolina*

The commission herein created [a college commission consisting of the state superintendent of public instruction, and four others ap-

[1] So-called "diploma mills" prey upon the desire to possess a degree. They spring up constantly, especially in states that have in their laws no provision for special approval. Elsewhere was noted a case recently before the United States Supreme Court in which the degree of Certified Public Accountant was sold without due consideration for the qualifications of the purchaser. Oriental University is another such institution of long-standing, conspicuous in the breadth of territory over which it operated and the scope of degrees offered. The head of the institution has just been convicted of using the mails for fraudulent purposes. "Degrees for Dollars," *Educational Record*, January, 1926.

pointed by the governor] is authorized to issue its license to confer degrees in such form as it may prescribe to any educational institution hereafter established by any person, firm, or corporation in this state: but no educational institution hereafter established in the state shall be empowered to confer degrees unless it has income sufficient to maintain adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences; and unless its baccalaureate degree is conferred only upon students who have completed a four-year course in college, preceded by the usual four-year high school course, or its equivalent. [7]

*Maryland*

The State Board of Education shall prescribe the minimum requirements for issuing all certificates, diplomas, and academic, collegiate, professional, or university degrees . . . nor shall any public or private educational institution issue any certificate, diploma, or academic, collegiate, professional or university degree without having first obtained the assent of the State Board of Education and approval of said board of the conditions of entrance, scholarship, and residence upon which said certificate, diploma, or degree is issued. [8]

*New Jersey*

Any corporation organized under any laws of this State, or permitted to transact business in this State, for the purpose of furnishing instruction or learning in the arts, sciences or professions conducted within this State to attain the admitting of any person or persons to the grade of a degree . . . shall, before beginning business, or continuing in the same, after this act shall become effective, file a certified copy of its certificate of incorporation with the State Board of Education, and obtain from the said Board a license to carry on said business under such rules and regulations as said board may prescribe. [9]

*New York*

Under such name, with such number of trustees or other managers, and with such powers, privileges and duties, and subject to such limitations and restrictions in all respects as the Regents may prescribe in conformity to law, they may, by an instrument under their seal and recorded in their office, incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way, associations of teachers, students, graduates of educational institutions, and other associations whose approved purposes are, in whole or in part, of educational or cultural value deemed worthy of recognition and encouragement by

the University. No institution or association which might be incorporated by the Regents under this chapter shall, without their consent, be incorporated under any other general law. [10]

*Ohio*

But no college or university shall confer any degree until the president or board of trustees thereof has filed with the secretary of state a certificate, issued by the state commissioner of common schools, that the course of study in such institution has been filed in his office, and that the equipment as to faculty and other facilities for carrying out such course are proportioned to its property and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof. [11]

*Oklahoma*

The state board of education shall have power to approve other colleges and universities which, when so approved, shall have the authority granted in section 394 above. [In this section a number of institutions named were given power, upon the recommendation of their respective faculties, to grant the academic and professional degrees usually and customarily granted to graduates of institutions of collegiate rank.] The application shall set forth clearly the course of study, the condition of equipment and other information as the state board of education shall require. [12]

*Pennsylvania*

Upon the receipt of said certified copy of certificate of incorporation . . . the said Superintendent of Public Instruction shall, within sixty days thereafter cause said State Council of Education to be convened at such time and place as he may designate, and said council shall thereupon hear and consider such application, and if the course of instruction and standard of admission to said institution and the composition of the faculty shall appear to said council to be sufficient, and the educational needs of the particular locality in which the proposed institution is to be situated and the commonwealth at large are likely to be met by the granting of said application, the said council shall thereupon cause to be endorsed on said application or certificate its findings and its approval of the same together with a recommendation to the law judge of the court before whom the same was originally presented that the same be granted. [13]

It is observed from the foregoing citations that no one pattern was followed by the states. Variety would seem to characterize the practice at present. However, a certain evaluation of the

authority of the several educational agencies is possible by answering two questions: (1) Is the action of the educational agency final in approving the articles, or issuing license to confer degrees? (2) Does the agency determine the educational standards upon which approval is rendered?

The following checks the laws of the ten states on these two points:

| State | Is the Action of the Agency Final? | Does the Agency Determine the Standards? |
|---|---|---|
| Arkansas | Yes | Yes |
| Georgia | Yes* | Yes |
| Massachusetts | Recommendation to Legislature | Yes |
| Maryland | Yes* | Yes † |
| North Carolina | Yes* | Yes |
| New Jersey | Yes | Yes † |
| New York | Yes | Yes |
| Ohio | Yes | Yes |
| Oklahoma | Yes* | Yes |
| Pennsylvania | Recommend to Court | Yes † |

* In the matter of conferring degrees.
† Law prescribes four-year preparatory course and four-year college course, or equivalent, as prerequisite for the degree.

In spite of the diversity of practice revealed in the laws of the ten states, the educational agency in practically all, acts with finality in its approval and in the determination of the standards upon which approval is based. This delegation of responsibility to an agency whose primary concern is education is fundamentally sound.

It may be questioned why only ten states have placed responsibility for approval in an educational agency. When the recency of the laws and the educational area affected are considered, the progress is markedly significant. Most of the laws referred to were passed since 1910. New York is a notable exception. It stood for more than one hundred years as the only state providing for approval in its educational board. The Regents of the University of New York was created in 1784 when the flush of state consciousness, which followed statehood, was strong. To this body was given power not only to grant charters on its own regulations but also to alter or repeal them. Pennsylvania was the second state to make provisions for approval by an educational agency, which, however, was not the regularly constituted educational body of the state. In 1895 a law was passed creating a

"College and University Council" to "consist of twelve members; namely, the Governor, Attorney General and Superintendent of Public Instruction . . . ex-officio, three persons selected from the presiding officers of undenominational colleges or universities . . ., three persons selected from the presiding officers of denominational colleges and universities . . ., and three persons holding official relationship to common schools of the state." [14] These were appointed by the governor for a term of four years with the advice and consent of the senate. This College and University Council passed upon the course of instruction, standards of admission, and educational needs of the community, and made recommendations to the judge of the court. [14] In 1921 this law was repealed and the power of approval was placed in the state council of education as cited above.

The action of Pennsylvania in 1895, together with evidence that certain institutions were abusing their degree-granting powers, caused the National Education Association to give special consideration to the problem of state control at its session in Milwaukee in July, 1897, which resulted in the passage of the following resolution:

> *Resolved,* That the State should exercise supervision over degree-conferring institutions through some properly constituted tribunal having power to fix a minimum standard of requirements for admission to or graduation from such institutions, and with the right to deprive of the degree-conferring power such institutions not conforming to the standard so prescribed. [15]

Following this action, the Bureau of Education, Washington, D. C., made a study of the situation throughout the states and published the findings in the annual report for the year, 1897-1898. This study revealed, in practically all the states, the absence of authority in an educational agency to grant degree-conferring power and the absence of requirements for institutions to meet in obtaining the right to confer degrees. Since the publication of the report, several additional states passed laws providing for a more effective supervision over institutions of higher education. Ohio passed its law in 1910; Arkansas transferred to the state board of education in 1911 the chartering powers held by a board composed of the governor, secretary of state, and state superintendent; New Jersey and Maryland followed in 1916; Oklahoma,

in 1917; and North Carolina and Georgia, in 1919. When the recency of the laws is considered it is evident that a distinct progress has been made.

In this connection should be considered also the educational area affected by the laws. The ten states constitute only 20 per cent of the total number of states, including the District of Columbia. These ten states, however, include a much larger proportion of the institutions of higher education in the United States. New York and Pennsylvania, with fifty-five institutions each, exceed any other state. Ohio is fourth in the list of states with forty-four; Massachusetts is sixth with thirty. [16] Whereas the ten states are 20 per cent of the total number of states, they have 36 per cent of the colleges and universities. This supports the observation that distinct progress has been made.

The topic under consideration is the initial control of the state over institutions of higher education by means of an agency vested with responsibility to approve the articles of incorporation. The observations are summarized in these words:

1. Thirty-nine states, including the District of Columbia, place responsibility for the approval of the articles of incorporation solely in such agencies as the governor, judge, corporation commission, county clerk, and secretary of state. These agencies are concerned largely with the legality of the instrument.

2. Ten states place in the educational agency of the state responsibility for either approving the articles or granting license to confer degrees. This is the present tendency.

*A few states only prescribe minimum requirements in their laws pertaining to property, instructional staff, courses, admissions, and degrees.* The initial control over incorporated institutions of higher education through an approving agency, has been noted. The state may exercise initial control also by prescribing in the laws governing the incorporation of such institutions limitations on the minimum amount of property or income which the institution must have, the number of members on the instructional staff, the courses of study, or the requirements for admission and degrees. Under its authority the state may define limitations extensively, either minimum or maximum, in the interest of public welfare. No state, however, has prescribed maximum limitations. Several have placed minimum requirements. These questions arise: What states have prescribed minimum requirements as

regards property, number of instructional staff, courses, admissions, and degrees with which the institutions must comply before their articles of incorporation are approved? What is the nature of the limitations?

*As regards property requirements.*—Five states prescribe minimum amounts of property or income. Michigan requires a college to have for its permanent use and benefit property to the value of $100,000 or more. This is not applicable to a college of a religious order or denomination. Nebraska has a similar provision. No exception, however, is made to a religious denomination.

New York requires an institution, before it can confer degrees, to have resources of at least $500,000. North Carolina merely provides that the property shall be adequate. Ohio places the minimum at $25,000. Pennsylvania by an act in 1923 thereafter requires of institutions an endowment of $500,000, or more, in buildings and equipment. This, however, is not applicable to institutions maintained by religious or other organizations to which support or services are given equivalent in value to the endowment required. Colleges and theological seminaries already incorporated under special act are permitted to obtain power to confer degrees if their invested funds are $100,000, or more, at the passage of the act. Colleges having property or capital of $100,000, or more, at the passage of the act can continue to confer degrees.

It is not the purpose here to inquire into the soundness of the policy of limiting the amount of property requisite for degree-granting power, but it is seriously questioned whether any definite minimum should be prescribed when property values and instructional costs are subject to fluctuation. It may be sounder to empower some agency, preferably educational, with authority to determine standards from time to time as the needs then dictate.

*Requirements regarding number of professors.*—Here again but few provisions appear in the laws. Arkansas and New York require a minimum instructional staff of six. District of Columbia and South Dakota merely provide that the number and designation of the professorships be stated in the articles of incorporation. Pennsylvania requires that an institution have eight regular professors who devote all of their time to college or university classes, except in a college or university devoted to a specific sub-

ject, such as art, archeology, literature, or science, in which case the faculty need not consist of more than three regular professors and two instructors or fellows.

*Requirements regarding courses of study.*—Arkansas and Colorado require the courses to be of university or college grade. District of Columbia provides that the courses be designated in the articles of incorporation. Maryland and New Jersey state that such courses shall be given as are approved by the state board of education. Louisiana, New York, North Carolina, and Pennsylvania require four years, or the equivalent, after completion of a high school course of four years.

It is evident that the states—even the few that mention the courses of study in their laws—do not in any way attempt to limit the kind or number of courses which may be offered by an institution of higher education. Where mentioned, the concern is only that the courses meet the approval of the state board of education or be of a certain grade and duration.

*Admission requirements.*—Pennsylvania, New York, and North Carolina, as noted, require for admission to an institution of higher education the completion of a four-year high school course or its equivalent. New York and Pennsylvania further require the approval of the state educational agency. In Maryland the state board of education defines the standards. Here again, since only four states include in their laws any specific reference to admissions, it is evident that the states have not intended to exercise control in this manner. It should be noted, however, that the educational agencies in those states which empower them with authority to approve articles of incorporation or grant licenses to confer degrees do determine standards of admission which brings the number of states thus exercising initial control to ten. Even so, the percentage of the states so providing is small. The explicit declaration of Pennsylvania, that it does not intend to prescribe limitations, is interesting in this connection. The law of 1921, No. 355, Sec. 6, states:

> Nothing in this act, or in any act of this Commonwealth now in force, shall be construed as fixing an arbitrary standard by which applications for charters under this act shall be measured, either with respect to value of assets, number of faculty, or course of instruction; but such matters shall be within the discretion of the law judge or court to whom petition is presented and the State Council of Education.

*Provisions for degrees.*—The power to confer degrees is not one of the inherent powers of a corporation and, consequently, has to be expressly granted to institutions which wish to confer them. In the granting of this power the state has a definite means for exercising control. What control, then, is contained in the laws of the states? Is the power to confer degrees general or limited? Is special approval by some agency necessary? An examination of the laws of the states reveals the following:

In 26 states the laws grant general power to confer degrees.

In 2 states power to confer degrees rests solely with the legislature.

In 10 states the educational agency approves the articles of incorporation or gives license to confer degrees.

In 1 state the corporation commission approves.

In 1 state the governor, attorney-general and secretary of state approve.

In 1 state the articles of incorporation specify the degrees.

In 7 states no mention of degrees is made.

These facts[1] need but little further explanation. The laws of the twenty-six states first mentioned place no limitation upon the degree-conferring power, except in Louisiana, where institutions are permitted to confer the degree of Bachelor of Arts or Bachelor of Science if their courses are four years beyond graduation from an approved high school. The laws of these states either give blanket permission to confer degrees or state that such degrees may be conferred as are usually conferred by like institutions. Obviously, this constitutes no practical control. There is also no prescribed control in the seven states where no mention is made of degrees. Therefore, practically no limitation on the power to confer degrees is provided in the laws of thirty-four states. In the remaining fifteen, special approval is required, ten of which place responsibility in the educational agency of the state. Further explanation, then, is not made at this point, except to refer to Chart 1, page 68, which summarizes for the several educational agencies of the states, among other powers, those pertaining to degrees.

To conclude, the initial control which states exercise through

[1] The initial control of the educational agency through the granting of licenses to confer degrees was presented on page 41, and the continuing control of the same agency through power to revoke the license will be given later. See page 51.

prescribed limitations in their laws governing property, etc., are summarized thus:

1. States have not generally, in their laws, placed limitations upon the amount of property, number of instructional staff, and courses of study requisite for incorporation as an institution of higher education, nor upon the power to confer degrees.

2. There is a tendency for states to empower some agency, generally the educational agency of the state, to determine the standards for admission and conferring of degrees, and upon these to approve articles of incorporation or grant license to confer degrees.

### CONTINUING CONTROL

What continuing control do the states exercise over institutions of higher education after their incorporation, as provided in the laws of the states? Is the control left to the courts, or have special provisions for control been prescribed? Control through the courts can be dismissed as generally applicable since, by virtue of their function, they can determine whether the objects of the trusts are being pursued and the funds are rightly appropriated, if alleged infringements are legally brought to them. (See page 31.) Three types of continuing control appear in the laws:

1. Limited tenure of the articles of incorporation.

2. Reservation of power to the legislature to amend or repeal the articles of incorporation.

3. Regulation of incorporated educational institutions through the educational agency of the state.

These are considered separately.

*Nine states limit the life of incorporated institutions.* Table 1 facing page 68 shows the following provisions for limited tenure of articles of incorporation:

| State | Years | |
|---|---|---|
| Arizona | 25 | |
| California | 50 | |
| Indiana | 50 | |
| Iowa | 50 | |
| Georgia | 20 | (unless otherwise provided in the articles) |
| Kansas | 50 | |
| Mississippi | 50 | |
| Missouri | 20 | (unless otherwise provided in the articles) |
| Utah | 100 | |

What is the nature of the control by means of a limited tenure? At the expiration of the corporate life of an institution re-incorporation is necessary. At this time the limitations which the state may prescribe are the same as if the institution were new. New limitations may be defined—acceptable, however, to the incorporators—and former ones may be altered or removed. Re-incorporation has another advantage. It brings the institution under the laws then in force; otherwise the institution operates under the laws that existed when originally incorporated unless the laws provided that any subsequent changes would have equal force. The limited tenure, then, makes possible a periodic revision of the articles of incorporation, and periodically brings the institutions under the existing laws. But the limited tenure has objections. It is apt to disturb the stability of the institution as the date of termination approaches. It does not provide regulatory control during the tenure.

*Seven states reserve to the legislature the right to amend or repeal the articles of incorporation.* Kentucky, New Mexico, North Dakota, Oklahoma, Tennessee, Texas, and Virginia reserve to the legislature the right to amend or repeal at any time the articles of incorporation of their institutions of higher education. The following illustrates the wording of the reservations:

*North Dakota*

Every grant of corporate power is subject to alteration, suspension or repeal in the discretion of the legislative assembly. [17]

*Texas*

All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the legislature to alter, reform or amend the same. [18]

This reservation would seem to constitute an effective control, even to the dangerous point of subjecting the institutions to the influence of politics. When it is considered, however, that the power to amend or repeal does not extend to the taking of property or to the destruction of vested rights, the laws are less formidable. Even so, control in regard to withdrawing the power to confer degrees or changing the composition of the board of trustees is strong.

*Seven states provide regulatory control through their educational agencies.* Reference has been made to the ten states which

place in their educational agencies the power to approve articles of incorporation or grant licenses to confer degrees. (See page 41.) The questions now to be considered are: Has the educational agency the power to define the standards which institutions of higher education must maintain in order to continue their life as corporations or confer degrees? Has the agency power to visit and inspect institutions or require reports from them? Has the agency power to amend or repeal the articles of incorporation of institutions or revoke their licenses to confer degrees? Does the agency render reports on the institutions?

For convenience in considering these questions the powers concerning them in the several states are summarized in Chart I. Both the initial and continuing control through the educational agency are included in this chart for purposes of comparison and picturing the complete situation. Most of the states presented exercise both controls.

First, however, mention should be made of the one state which provides for the visitation of institutions other than through the educational agency. Kentucky provides that religious, charitable, and educational institutions shall "at all times be subject to visitation by the legislature." [19] Such power in Kentucky is effective, since the legislature has reserved the right to repeal charters, granted or enacted since February 14, 1856, "unless a contrary intent be therein plainly expressed." [20] But visitation by the legislature carries political implications that open such procedure to criticism.

In order that the provisions for visitation, etc., by the educational agency may be clearly understood, the parts of the laws that apply in the respective states are quoted here:

*Arkansas*

. . . the said board [State Board of Education] shall have the sole power to . . . inspect all chartered institutions, and to revoke their charters, for failure to maintain such standards as may be required. All charters heretofore granted shall be examined by the board and it shall have authority to issue new or revised charters, if necessary, to bring all into conformity to the rules of said board. [4]

*Maryland*

The State Board of Education may, in its discretion, prepare and publish annually, a list of approved colleges and universities and determine, by by-laws, the standards for said approval. . . . The State

Board of Education shall require, with and on the advice of the State Superintendent of Schools, all private educational associations, corporations, or institutions to report annually, on or before the thirty-first day of August, as to enrollment and courses of study on such forms as the State Board of Education may provide. [21]

See also page 42.

*Michigan*

Every such corporation (educational) shall be subject to the visitation and inspection of the Superintendent of Public Instruction, in person or through visitors or inspectors appointed by him, at such times as he may fix. Said superintendent shall be empowered to ascertain and publish information upon all matters pertaining to the condition, management, instruction and practices of the corporation; and upon evidence that the property is at any time less than is required by law, or that the corporation is not otherwise complying with the provisions of this act, he shall serve notice on the corporation to remedy the defects within a reasonable time fixed in such notice, and in case the deficiency is not corrected within the time fixed by him, he may institute proceedings at law for the dissolution of the corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the Superintendent of Public Instruction, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations. [22]

*Minnesota*

The trustees of any incorporated college or seminary, in addition to their other powers, may prescribe the course of study, grant such literary honors and degrees as are usually granted by similar institutions, and give suitable diplomas in evidence thereof. They may make all rules, ordinances, and by-laws necessary and proper to carry into effect its powers. Every such college shall be subject to visitation and examination by the superintendent of public instruction. . . . They shall annually, on or before January 1, report to the superintendent of public instruction the name of each trustee, officer, and student, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in.[1]

[1] A letter from the superintendent of public instruction, Minnesota, October 24, 1925, states that this law is practically dead. "In the first place," says the letter, "the State Department of Education is not required to visit and examine these institutions. The law simply provides that they shall be subject or open to visitation. Neither is the State Department required to collect data from these institutions; as a matter of fact, by examining reports of previous years, we find that colleges have made this report only once, which was in 1880." [23]

*New Jersey*

No school, corporation, association or institution of learning conducted within this state . . . shall admit any such person to the grade of a degree . . . without first submitting the basis or conditions thereof to the State Board of Education of the State of New Jersey, and obtaining therefrom its approval of the basis or conditions thereof so submitted. . . . [There are excepted the institutions that have been established and conducted within the state for a period of twenty-five years.] The approval of the basis or conditions for the admission to the grade of a degree or degrees . . . may for proper cause, in the discretion of the State Board of Education, be revoked, after hearing, upon twenty days' notice. [24]

*New York*

The Regents, or the Commissioner of Education, or their representatives, may visit, examine, and inspect any institution in the University and any school or institution under the educational supervision of the State, and may require, as often as desired, duly verified reports therefrom giving such information and in such form as the Regents or the Commissioner of Education shall prescribe. For refusal or continued neglect on the part of any institution in the University to make any report required, or for violation of any law or any rule of the University, the Regents may suspend the charter or any of the rights and privileges of such institution. [25]

The Regents may, at any time, for sufficient cause, by an instrument under their seal and recorded in their office, change the name, or alter, suspend or revoke the charter or incorporation of any institution which they might incorporate . . . if subject to their visitation or chartered or incorporated by the Regents or under a general law. [26] No individual, association or corporation not holding university or college degree-conferring powers by special charter from the legislature of this State or from the Regents, shall confer any degrees, or transact business under, or in any way assume the name university or college until written permission to use such name shall have been granted by the Regents under their seal. [27]

Subject and in conformity to the constitution and laws of the State, the Regents shall exercise legislative functions concerning the educational system of the State, determine its educational policies, and, except as to the judicial functions of the Commissioner of Education, establish rules for carrying into effect the laws and policies of the State, relating to education, and the powers, duties and trusts conferred or charged upon the University. [28]

An institution to be ranked as a college must have at least six pro-

fessors giving their entire time to instruction therein; must require for admission not less than four years of academic or high school preparation, or its equivalent; and must maintain a curriculum of four full years of approved grade in liberal arts and sciences.[1] [29]

*North Carolina*

All institutions chartered under this article shall file such information with the state superintendent of public instruction as the commission may direct, and the commission shall have full authority to send an expert to visit any institution applying for a license to confer degrees under this article. And if any one of them shall fail to keep up the required standard the commission shall revoke the license to confer degrees, subject to a right of review of this decision by the judge of the superior court upon action instituted by the educational institution whose license has been revoked. [30]

*Ohio*

See page 43.

*Oklahoma*

See page 43.

*Pennsylvania*

All corporations chartered under the provision of this act shall be subject to visitation and inspection by representatives of said council [State Council of Education], and if any of them shall fail to keep up to the standard recital in its charter, in any of the branches of education in which it has power to confer degrees, the court may, upon the recommendation of the council, revoke the power to confer degrees in that branch or branches of education in which the corporation shall fail. [31]

The standards recited in the charter of the educational corporation in Pennsylvania are included in the following items which the articles of the corporation certify:

1. The name under which the trust or trusts shall be incorporated.
2. The purpose for which it is formed.
3. The kind or kinds of degrees which the corporation shall have power to confer.
4. The amount of assets in the possession of said subscribers which are to be devoted to the establishing and conducting of those branches of education in which the corporation shall have power to confer degrees.

[1] The college is thus defined by the Regents' Rules.

5. A brief statement of the requirements for admission, and of the course of study to be pursued in each branch of education in which the corporation shall have power to confer degrees.

6. The place or places where the business is to be transacted.

7. The term for which it is to exist.

8. The names and residences of the trustees and the manner in which their successors are to be chosen or qualified.

9. The officers of said city, and the names of those filling the offices at the time, who *ex virtute officii* are trustees, and the manner of their appointment or selection by the proper body of the city government.

10. Such other provisions as may be necessary to carry out the intent of the testator or donor. [32]

It is possible now from these citations to answer the four questions concerning the power of the educational agency to define standards, to visit and inspect institutions, to amend or repeal articles of incorporation, to revoke licenses, to confer degrees, and to render reports. Generally the agency has these powers. It is so in seven states except in the matter of rendering reports on the conditions of the institutions. Where the agency has legislative power to act finally in regard to the incorporation of an institution or the conferring of degrees, as is the case in seven states, it is not necessary for the agency to report to its legislature concerning the institutions, except as it may report generally on education in the states. Five states have placed judicial power in the hands of the educational agencies. In the other two, Michigan and Pennsylvania, action is recommended to the court. The seven states are: Arkansas, Maryland, Michigan, New Jersey, North Carolina, New York, and Pennsylvania. Minnesota is included among the states providing regulatory control since institutions of higher education are subject to visitation by the superintendent of public instruction. However, this visitorial power is not being exercised at present.

In addition to these eight states, Ohio and Oklahoma may be included, but their authority to exercise a regulatory control is doubtful. As noted previously, the educational agencies in these two states are vested with power to grant to an institution after incorporation a license to confer degrees. Whether these agencies have the power to visit and inspect the institutions after the license is granted or have the power to revoke the license is not

stated in the laws. Their right in these matters may be open to question.

It is not pertinent here to analyze the powers of the educational agencies in detail. The laws are not drawn upon any one pattern yet in most cases the purpose is clear. For instance, the laws of Arkansas, New York, New Jersey, and Pennsylvania are quite differently constructed, yet the ends are the same, namely, the empowering of the educational agency with sufficient authority to exercise an effective regulatory control. The Arkansas law possesses the virtue of being brief, yet complete, in its grant of power.

There is a provision in the Michigan law not specifically mentioned in the others that deserves mention, for, at the same time that it is designed to serve the public, it affords an indirect control. The superintendent of public instruction in this state is empowered to *ascertain* and *publish information* on all matters pertaining to the condition, management, instruction, and practices of the institution. Information so gathered and disseminated serves the people of the state positively in such ways as enabling them to select wisely the institutions in which they wish to educate their children. Through the same information, in addition, the public rates institutions, and institutions rate each other. Regulation through this indirect method is frequently very stimulative and effective. Perhaps with the same thought in mind, the legislature of Maryland empowered its state board of education "in its discretion" to "prepare and publish annually a list of approved colleges and universities." (See page 52.)

Concerning the effectiveness of publicity as a means of indirect control Freund says:

> Measures securing publicity are especially valuable and may often be relied upon to bring about the desired standard of private action without prescribing that standard in private terms. Many practices cannot stand the light of publicity, and will be abandoned voluntarily, or under the stress of public opinion if secrecy is impossible. The requirement of publicity is now generally advocated as the most effectual means of dealing with the abuses of monopolies.[1]

Regulatory control through the educational agency has been in operation longer in the states of New York and Pennsylvania than in the others. Consequently, procedure in them is more

[1] Freund, E. *Police Power*, par. 35.

definitely established. As a basis for control the institutions in each state render annual reports to the agency. Copies of the respective reporting blanks are shown on pages 60 to 67.

### SUMMARY OF STATE CONTROL AS PROVIDED IN THE LAWS

States generally provide for the incorporation of educational institutions through general laws. Three states only retain the early procedure of chartering institutions through special act of the legislature. Eleven states provide for incorporation either under general law or by special act.

The laws generally provide no state control of incorporated institutions of higher education by requiring at the time of incorporation careful scrutiny of the articles of incorporation by a special approving agency. Seven states place approving power in a judge of the county or circuit court, six in a charter board or corporation commission, ten in an educational agency. Twenty-eight provide merely that the articles of incorporation be filed with the county clerk or secretary of state.

The laws generally provide no state control by prescribing minimum standards for the amount of property, number of instructional staff, courses, admissions, or degrees.

There is a tendency to empower the educational agency of the state, upon its own standards, to approve the articles of incorporation, or grant license to confer degrees. Ten states so provide.

The laws generally provide no continuing state control by limiting the tenure of the educational corporation, or by reserving to the legislature the right to amend or repeal the articles of incorporation. Nine states limit the tenure. Six states reserve the right to amend or repeal.

There is a tendency to empower the educational agency of the state with authority to visit and inspect institutions of higher education, and where standards prescribed by the agency are not complied with, to amend or repeal the articles of incorporation or revoke the license to confer degrees. Seven states so provide.

### REFERENCES

1. U. S. Bureau of Education. "State Regulation of Degree-Granting Institutions of Higher Learning" (Unpublished).
2. Kansas. *Revised Statutes,* Chap. 17, Sec. 401-403.

3. Nebraska. *Compiled Statutes,* 1922, Art. VII, Sec. 525.
4. Arkansas. *Digest of School Laws,* 1921, Sec. 14.
5. Georgia. *School Code,* 1921, Sec. 14.
6. Massachusetts. *Acts, 1923,* Chap. 51.
7. North Carolina. *Consolidated Statutes,* Chap. 95, Sec. 5400.
8. Maryland. *Public School Laws,* 1920, 12B.
9. New Jersey. *School Laws,* 1921, Sec. 577 (1).
10. New York. *Education Law,* 1924, Sec. 59.
11. Ohio. *School Laws,* 1915, Sec. 9923.
12. Oklahoma. *Public School Laws,* 1919, Sec. 395.
13. Pennsylvania. *Public Laws,* 1921, No. 367.
14. Pennsylvania. *Public Laws,* 1895, No. 327.
15. *National Education Association. Proceedings of,* 1897, p. 700.
16. U. S. Bureau of Education. *Bulletin, 1924, No. 20, Statistics of Universities, Colleges, and Technical Schools,* p. 14.
17. North Dakota. *Compiled Laws,* 1913, Sec. 4495.
18. Texas. *Vernon Sayles' Civil Statutes,* 1914, Art. 1139.
19. Kentucky. *Carrol Statutes,* 1915, Sec. 883.
20. *Ibid.,* Sec. 1987.
21. Maryland. *Public School Laws,* 1920, 15A, 17.
22. Michigan. *Public Acts,* 1921, Chap. 2, Sec. 8.
23. Minnesota. *General Statutes,* 1913, Sec. 6529.
24. New Jersey. *School Laws,* 1921, Sec. 578, 579.
25. New York. *Education Law,* 1924, Sec. 58.
26. *Ibid.,* Sec. 62.
27. *Ibid.,* Sec. 66.
28. *Ibid.,* Sec. 46.
29. University of the State of New York. *Regents Rules,* 1919, Sec. 24, p. 29.
30. North Carolina, *Ibid.*
31. Pennsylvania. *Purdon's Digest,* 13th ed., Supplement, p. 5536, Sec. 7.
32. *Ibid.,* Sec. 4, p. 5534.

Name of Institution.

Location.

Commonwealth of Pennsylvania
DEPARTMENT OF PUBLIC INSTRUCTION
State Council of Education

# REPORT OF HIGHER INSTITUTIONS OF LEARNING

## FOR SCHOOL YEAR 192__ 192__

**Make Two Copies of this Report, One to be Filed with the Department of Public Instruction and the Other to be Filed at the Institution.**

Date of Organization..... Date of Charter .....

Name of President or Chancellor .....

Number of trustees..... How appointed.....

Denominational or sectarian connection .....

LOCATION

INSTITUTION

**GROUNDS AND BUILDINGS**

Number of acres for campus purposes.....
Number of acres for athletic purposes.....
Number of additional acres.....
Value of grounds ..... $.....
Number of buildings used for educational purposes .....
Number of buildings used for dormitory purposes .....
Number of buildings used for other purposes .....
Value of buildings ..... $.....

**EQUIPMENT**

Value of apparatus (a) Physical ..... $.....
(b) Chemical ..... $.....
(c) Biological ..... $.....
(d) Psychological ..... $.....
(e) Engineering ..... $.....
(f) Other apparatus ..... $.....
Number of volumes in library.....
Value of library ..... $.....

**FACULTY**

Number of full time teachers .....
Number of part time teachers .....
Number holding Baccalaureate degree .....
Number holding Master's degree .....
Number holding Doctor's degree .....
Total .....
Longest term of service in years.....
Shortest term of service in years.....
Median term of service in years.....

Salaries:
Highest salary .....
Lowest salary .....
Median salary .....

| STUDENTS | MALE | FEMALE | TOTAL |
|---|---|---|---|
| Number of full time students from Pennsylvania ..... | | | |
| Number of full time students from other states ..... | | | |
| Number of full time students from other countries ..... | | | |
| Number of part time students ..... | | | |
| Total enrollment for the year ..... | | | |
| **Graduates:** | | | |
| Number of graduates at last commencement ..... | | | |
| Number of graduates since foundation ..... | | | |
| **Teacher-Students:** | | | |
| Number of students who are teachers in service ..... | | | |
| Number of students preparing for teaching ..... | | | |
| Number of graduates at last commencement who entered teaching profession ..... | | | |

Ad—15

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## ORGANIZATION

**Admission Requirements** _____

_____

_____

_____

Departments and schools maintained in the institution:

| | Graduation Requirement in Semester hours | Degrees Conferred | | | |
|---|---|---|---|---|---|
| | | | Kind | | Number |
| Graduate | | | | | |
| Collegiate | | | | | |
| Professional | | | | | |
| Other Depts. | | | | | |

(Check departments maintained and indicate types of schools in each)

College year is expressed in:—

SEMESTERS

Fall semester _____ weeks
Spring semester _____ weeks
Summer session _____ weeks

TERMS

Fall term _____ weeks
Winter term _____ weeks
Spring term _____ weeks
Summer term _____ weeks

SUMMER SESSION

| Course | Weeks | Periods per week | No. S. H. Credit | *Teacher-Student Enrollment | | | Total Enrollment | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | M. | F. | Total | M. | F. | Total |
| | | | | | | | | | |
| | | | | | | | | | |
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| | | | | | | | | | |
| | | | | | | | | | |
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| | | | | | | | | | |

EXTENSION WORK

| Course | Time of Day | Place | No. S. H. Credit | *Teacher-Student Enrollment | | | Total Enrollment | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | M. | F. | Total | M. | F. | Total |
| | | | | | | | | | |
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Where the necessities of this report require more space than is here provided, the report should be made on a separate sheet and attached herewith.

*A teacher-student is a Pennsylvania teacher in service, enrolled as a student in the institution.

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CORRESPONDENCE COURSES

| Course | Hrs. prep. required per lesson | No. of lessons per course | No. S. H. Credit | *Teacher-Student Enrollment | | | Total Enrollment | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | M. | F. | Total | M. | F. | Total |
| | | | | | | | | | |
| | | | | | | | | | |
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| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

## TEACHER TRAINING

| Professional Courses | No. of Weeks | Periods per wk. | S. H. Credit | Professional Courses | No. of Weeks | Periods per wk. | S. H. Credit |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| Practice teaching | | | | No. pupils available | School used | Nature of arrangement |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

## FINANCIAL STATEMENT

**Receipts.**

Amount of productive endowment.....$_____
Income from productive endowment.....$_____
Appropriation from State, if any.....$_____
Private benefactions, if any, for the year.....$_____
Tuition and fees from students.....$_____
Receipts from other sources, if any.....$_____
Total receipts ..... $_____

**Expenditures.**

Amount expended for salaries of instruction force.....$_____
Amount expended for other salaries.....$_____
Amount of all other expenses.....$_____
Total cost of operations for the year .....$_____

I hereby certify that the information herein contained is correct.

_____ **President.**

Seal of the institution:

_____ **Secretary.**

**APPLICATION FOR RECOGNITION

_____ 19__

_____
(Name of Institution)

of _____, hereby applies for recognition and approval by the State Council of Education of Pennsylvania.

This is to certify that the information herein contained is correct; that the *catalog sent herewith is our latest publication and that the copy of the *charter hereto affixed is an exact reproduction of the wording of the original document.

_____ President.

_____ College.

_____ City.

(Seal of institution.)

_____ State.

Secretary.

*Copies of catalogue and charter should accompany this application.
**Pennsylvania Institutions which have been recognized by the State Council of Education will disregard this application.

**Colleges and professional and technical schools**

**ANNUAL REPORT OF THE TRUSTEES OF**

_____

FOR THE YEAR ENDING JULY 31, 1925

**To The University of the State of New York**

This annual report is required by law to be transmitted to the Department on or before August 1, 1925.

**Item 1**

Days of regular classroom instruction including half-day sessions but excluding summer sessions.....

**Item 2 Faculty and employees**

Names of officers of faculty July 31, 1925

President..... Dean.....

Registrar..... Secretary .....

| No. of officers of instruction | Men | Women | Total |
|---|---|---|---|
| Full professors..... | | | |
| Adjunct, associate and ass't professors | | | |
| Instructors and tutors..... | | | |
| Lecturers..... | | | |
| Other assistants on teaching force..... | | | |
| *Total*..... | | | |

The following questions are to be answered by medical schools:

How many professors or instructors are paid a salary and give their full time to medical work?.....

Specify subjects taught by each:

.....

.....

.....

.....

Does the president of the faculty teach?..... Is he included under "officers of instruction" above?.....

Does the dean of the faculty teach?..... Is he included under "officers of instruction" above?.....

**Item 3** Students. Number and classification of students during past year

Insert in blank spaces any other courses, e. g. Philosophy (Ph.B.) etc. and use blank sheet if more columns are needed.
Schools of law, theology, medicine etc. should write in the proper heads e. g. "Law (LL.B.)," "Theology (B.D.)," "Medicine (M.D.)" etc.
In column "Unclassified" put according to year of attendance, regardless of studies taken, all college and graduate students not taking a regular course leading to a degree.
Do not include summer school or university extension students in the following classifications.

| CLASSES | Arts (B. A.) | | | Science (B. S.) | | | | | | | | | Unclassified | | | Total | | Grand total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Men | Women | Total | Men | Women | Total | Men | Women | Total | Men | Women | Total | Men | Women | Total | Men | Women | |
| Freshman, 1st year.. | | | | | | | | | | | | | | | | | | |
| Sophomore, 2d year. | | | | | | | | | | | | | | | | | | |
| Junior, 3d year..... | | | | | | | | | | | | | | | | | | |
| Senior, 4th year.... | | | | | | | | | | | | | | | | | | |
| *Total*..... | | | | | | | | | | | | | | | | | | |
| *Fifth year and above or graduate students* | | | | | | | | | | | | | | | | | | |

S399-Ap25-300(3741)*

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**Item 4 Degrees conferred**

| | First degrees on completion of courses in residence | | | | | | | | | | | | Higher degrees: On examination | | | | | Higher degrees: "In course" without examination | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | B.A. | Ph.B. | B.S. | C.E. | LL.B. | M.D. | D.D.S. | D.V.S. | B.D. | | | Total | M.A. | Ph.D. | M.S. | | Total | M.A. | M.S. | | Total |
| Men | | | | | | | | | | | | | | | | | | | | | |
| Women | | | | | | | | | | | | | | | | | | | | | |
| *Total since last report* | | | | | | | | | | | | | | | | | | | | | |

Besides the above, .....men and.....women were graduated during the past year, but received no degree.

**Recipients of honorary degrees conferred without examination**

| Name | Degree | Residence |
|---|---|---|
| | | |

**Item 5 Library**

Number of volumes in library.....; pamphlets..... Is your library free to the public for reference?.....for lending?..... Number of volumes issued for home use.....

This should state entire circulation for the year. One book lent 10 times counts 10 not 1.

[a] **Item 6 Summary of property owned by institution**

| | | |
|---|---|---|
| Grounds | $ | |
| Buildings | | |
| Furniture | | |
| Apparatus | | |
| Library | | |
| Museum | | |
| Other property | | |
| *(Item A) Total property used* | $ | |
| [b] Investments at beginning of year | $ | |
| Added to investments during year | | |
| 1 From gifts and bequests | | |
| 2 From income of former investments | | |
| 3 From other sources | | |
| *Total* | $ | |
| Depreciation or losses in investments | | |
| *(Item B) Net investments at end of year* | $ | |

**Item 6 Property *(concluded)***

| | | |
|---|---|---|
| Item A | $ | |
| Item B | | |
| *Total property* | $ | |
| Debts at end of year | | |
| Net property owned | $ | |

[a] **Item 7 Receipts**

| | | |
|---|---|---|
| Balance from 1924 | $ | |
| Tuition fees | | |
| Room rent | | |
| Board | | |
| Other receipts from students | | |
| Income from investments | | |
| Amount from maturing investments | | |
| Gifts and bequests | | |
| All other sources including temporary loans | | |
| *Total* | $ | |

[a] Do not include in this statement any figures for summer school or any figures included in report for academic department.
[b] Including real estate not used by institution, securities and cash on hand belonging to these investments. If this amount does not equal the investments reported at the end of last year, give reasons for difference in the amount reported here.
[c] Debts must include mortgages, treasurer's notes payable, unpaid instructors' salaries, and all valid claims against the institution including any balance due the treasurer for money advanced.

**Item 8 Payments** (*concluded*)

| | SALARIES | OTHER OBJECTS | TOTAL |
|---|---|---|---|
| EXPENSES OF CAPITAL OUTLAY | $ | $ | $ |
| 32 Land | | | |
| 33 New buildings | | | |
| 34 Alterations of old buildings | | | |
| 35 Equipment | | | |
| 36 Other capital outlay | | | |
| INVESTMENTS | | | |
| 37 Amount transferred to investment fund | | | |
| Total payments for the year | | | |
| [a] Balance at close of year | | | |
| Total payments and balance | $ | $ | $ |

**Item 9 Miscellaneous**

Give number of years in each course.....

Give number of students taking summer course: men.....women.....

Give number on teaching force in summer school: men.....women.....

Give total receipts for the summer school 1924, $..... Total expenditures, $.....

Give number of university extension students: men.....women.....

**Item 10 Affidavit of presiding officer**

STATE OF NEW YORK }
COUNTY OF..... } *ss.*

....., being duly sworn, deposes and says that he is the presiding officer of.....for which the foregoing report is made. That said report has been prepared in accordance with the instructions of The University of the State of New York, and that the statements therein he verily believes to be in all respects true and that an exact copy of this report has been filed with the permanent records of the institution.

Subscribed and sworn to before .....

me this.....day of.....1925 [b] *President of*.....

.....

[a] This should be the difference between the total of Item 7 and total expenditures.
[b] Or corresponding officer.

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* Item 8 Payments

| | SALARIES | OTHER OBJECTS | TOTAL |
|---|---|---|---|
| | $ | $ | $ |
| EXPENSES OF GENERAL CONTROL | | | |
| 1 Salaries of president, clerks and office assistants | | | |
| 2 Other expenses of administration | | | |
| EXPENSES OF INSTRUCTION | | | |
| 3 Salaries for instruction | | | |
| 4 Prizes and scholarships | | | |
| 5 Supplies used in instruction | | | |
| 6 Other expenses of instruction | | | |
| EXPENSES OF OPERATION OF COLLEGE PLANT | | | |
| 7 Wages of janitor and other employees | | | |
| 8 Fuel | | | |
| 9 Water, light and power | | | |
| 10 Janitors' supplies | | | |
| 11 Other expenses of operation of plant | | | |
| EXPENSES OF MAINTENANCE OF COLLEGE PLANT | | | |
| 12 Repair of buildings and upkeep of grounds | | | |
| 13 Repair and replacement of equipment | | | |
| 14 Other expenses of maintenance of college plant | | | |
| EXPENSES OF AUXILIARY AGENCIES AND SUNDRY ACTIVITIES | | | |
| 15 Libraries | | | |
| 16 Repair and replacement of books | | | |
| 17 New books (capital outlay) | | | |
| 18 Expenses of boarding pupils | | | |
| 19 Expenses of boarding and caring for teachers | | | |
| 20 Recreation | | | |
| 21 Other auxiliary agencies and sundry activities | | | |
| EXPENSES OF FIXED CHARGES | | | |
| 22 Pensions | | | |
| 23 Rent | | | |
| 24 Insurance | | | |
| 25 Taxes | | | |
| 26 Contributions and contingencies | | | |
| EXPENSES OF DEBT SERVICE | | | |
| 27 Redemption of bonds or mortgages | | | |
| 28 Redemption of short term loans | | | |
| 29 Payment of interest on bonds or mortgages | | | |
| 30 Payment of interest on short term loans | | | |
| 31 Refunds (tuition and board or room rent) | | | |

* Do not include in this statement any figures for summer school or any figures included in report for academic department.

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## CHART 1

### Powers Vested in the Educational Agencies of the States Pertaining to Initial and Continuing Control over Private Incorporated Institutions of Higher Education as Defined in the Laws of the States

| Powers Vested in the Educational Agency of the State | The Twelve States Whose Laws Empower the Educational Agency to Exercise Control | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Arkansas | Georgia | Maryland | Massachusetts | Michigan | Minnesota | New Jersey | North Carolina | Ohio | New York | Oklahoma | Pennsylvania |
| Initial Control | | | | | | | | | | | | |
| Power to: | | | | | | | | | | | | |
| Define the standards upon which institutions are approved or licenses to confer degrees are granted | Yes | Yes | Yes | Yes | No | No | Yes | Yes | Yes | Yes | Yes | Yes |
| Approve articles of incorporation or grant license to confer degrees | Yes | Yes | Yes | (2) | No | No | Yes | License | License | Yes | Yes | (2) |
| Continuing Control | | | | | | | | | | | | |
| Power to: | | | | | | | | | | | | |
| Define standards for admission, degrees, etc. | Yes | No | Yes | No | Yes | No | Yes | Yes | No | Yes | No | (5) |
| Visit and inspect the institution, or require reports from them | Yes | No | Require reports | No | Yes | Yes | Yes | Yes | No | Yes | No | Yes |
| Alter or repeal articles of incorporation, or revoke license to confer degrees | Yes | No | (1) | No | (3) | No | Yes | License | No | Yes | No | (2) |
| Render reports on the condition of the institutions | No | No | (1) | No | Yes | Yes | (4) | No | No | No | No | No |

(1) "The State Superintendent of Schools shall publish annually a list of the standard colleges and universities in the State, based on the definition of a standard college adopted by the Carnegie Foundation for the Advancement of Teaching". By-law 4, State Board.
(2) The educational agency of the state recommends to the court in Pennsylvania; to the general court in Massachusetts.
(3) Institutes proceedings at law.
(4) All approvals and disapprovals are recorded and open to the public.
(5) The law prescribes a minimum of four years of high school for admission and four years of college for a degree, or equivalents.

*Note:* The states which empower the educational agency to alter or repeal the articles of incorporation, or revoke the license to confer degrees, do not require the educational agency to render reports.

# TABLE I

## ANALYSIS OF THE LAWS OF THE STATES GOVERNING THE INCORPORATION OF INSTITUTIONS OF HIGHER EDUCATION

| States | Laws under which Institutions are Incorporated | | Initial Control: Articles of Incorporation Approved By | | | | | Initial Control: Minimum Standards Prescribed As To | | | | | Continuing Control | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Corporation Laws | Special Act of the Legislature | Educational Agency of the State | County or Circuit Judge | State Charter Board or Corporation Commission | Governor or Attorney General | Filed with County Clerk or Secretary of State without Special Approval | Property, Endowment or Income | Number of Members or Instruction Staff | Courses of Study | Admission Requirements | Requirements for Degrees | Limited Tenure of the Corporation | Power Reserved to the Legislature to Alter or Repeal | Regulatory Control Placed in the Educational Agency |
| Alabama | x | .. | .. | x | .. | (1) | .. | .. | .. | .. | .. | (21) | .. | .. | .. |
| Arizona | x | .. | .. | .. | x | .. | .. | .. | .. | .. | .. | (22) | 25 yr. | .. | .. |
| Arkansas | x | .. | x | .. | .. | .. | .. | .. | (6) | (16) | .. | (23) | .. | .. | x |
| California | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | 50 yr. | .. | .. |
| Colorado | x | .. | .. | .. | .. | .. | x | .. | .. | (17) | .. | (21) | .. | .. | .. |
| Connecticut | x | x | .. | .. | .. | .. | (2) | .. | .. | .. | .. | (24) | .. | .. | .. |
| Delaware | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| District of Columbia | x | x | .. | .. | .. | .. | x | .. | (9) | (9) | .. | (21) | .. | .. | .. |
| Florida | x | x | .. | x | .. | .. | .. | .. | .. | .. | .. | (21) | .. | .. | .. |
| Georgia | x | .. | x | x | .. | .. | .. | .. | .. | .. | .. | (23) | (29) | .. | .. |
| Idaho | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| Illinois | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| Indiana | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | 50 yr. | .. | .. |
| Iowa | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | 50 yr. | .. | .. |
| Kansas | x | .. | .. | .. | x | .. | .. | .. | .. | .. | .. | (21) | 50 yr. | .. | .. |
| Kentucky | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | x | .. |
| Louisiana | x | x | .. | .. | .. | .. | x | .. | .. | (18) | .. | (25) | .. | .. | .. |
| Maine | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (26) | .. | .. | .. |
| Maryland | .. | x | x | .. | .. | .. | .. | .. | .. | (19) | (19) | (23) | .. | .. | x |
| Massachusetts | .. | x | x | .. | .. | .. | .. | .. | .. | .. | .. | (27) | .. | .. | .. |
| Michigan | x | .. | .. | .. | .. | .. | (2) | (4) | .. | .. | .. | (21) | .. | .. | x |
| Minnesota | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | x |
| Mississippi | x | .. | .. | .. | .. | x | .. | .. | .. | .. | .. | (31) | 50 yr. | .. | .. |
| Missouri | x | .. | .. | x | .. | .. | .. | .. | .. | .. | .. | (21) | (29) | .. | .. |
| Montana | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| Nebraska | x | .. | .. | .. | x | .. | .. | (5) | .. | .. | .. | (21) | .. | .. | .. |
| Nevada | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (22) | .. | .. | .. |
| New Hampshire | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (22) | .. | .. | .. |
| New Jersey | x | .. | x | .. | .. | .. | .. | .. | .. | (19) | .. | (23) | .. | .. | x |
| New Mexico | x | .. | .. | .. | x | .. | .. | .. | .. | .. | .. | (21) | .. | x | .. |
| New York | x | .. | x | .. | .. | .. | .. | (6) | (6) | (20) | (20) | (23) | .. | .. | x |
| North Carolina | x | .. | (3) | .. | .. | .. | x | (10) | (10) | (20) | (20) | (23) | .. | .. | x |
| North Dakota | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | x | .. |
| Ohio | x | .. | (3) | .. | .. | .. | x | (7) | (11) | (11) | .. | (23) | .. | .. | (30) |
| Oklahoma | x | .. | (3) | .. | .. | .. | x | .. | .. | .. | .. | (23) | .. | x | (30) |
| Oregon | x | .. | .. | .. | x | .. | .. | .. | .. | .. | .. | (22) | .. | .. | .. |
| Pennsylvania | x | .. | x | x | .. | .. | .. | (8) | (12) | (13) | (14) | (23) | .. | .. | x |
| Rhode Island | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (22) | .. | .. | .. |
| South Carolina | x | .. | .. | x | .. | .. | .. | .. | .. | .. | .. | (22) | .. | .. | .. |
| South Dakota | x | .. | .. | .. | .. | .. | x | .. | (15) | (15) | .. | (21) | .. | .. | .. |
| Tennessee | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | x | .. |
| Texas | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | x | .. |
| Utah | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | 100 yr. | .. | .. |
| Vermont | .. | x | .. | .. | .. | .. | .. | .. | .. | .. | .. | (26) | .. | .. | .. |
| Virginia | x | .. | .. | x | x | .. | .. | .. | .. | .. | .. | (28) | .. | x | .. |
| Washington | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| West Virginia | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| Wisconsin | x | x | .. | .. | .. | .. | x | .. | .. | .. | .. | (22) | .. | .. | .. |
| Wyoming | x | .. | .. | .. | .. | .. | x | .. | .. | .. | .. | (21) | .. | .. | .. |
| Total | 46 | 14 | 10 | 7 | 6 | 1 | 28 | 6 | 7 | 11 | 4 | * | 9 | 7 | 10 |

(1) Amendments approved by the governor.
(2) Approves as well as files.
(3) License to confer degrees conferred by the educational agency.
(4) $100,000 except denominational colleges.
(5) $100,000.
(6) $500,000; $50,000 for a medical college.
(7) $25,000.
(8) $500,000 except where support is equivalent.
(9) Articles of incorporation must include the number and designation of professorships; also statement of courses
(10) Must be adequate.
(11) The superintendent of public instruction approves courses and suitability of faculty before degree-granting power is given.
(12) Eight; a college for a special subject may have three professors and two instructors.
(13) Four years or equivalent.
(14) Four years of high school or equivalent.
(15) Must set forth the number and designation of professorships.
(16) Standard collegiate or university courses.
(17) Must be of the grade of a university or college.
(18) Four years beyond an approved high school.
(19) As approved by the state board of education.
(20) Four years high school; four years college; or equivalents.
(21) Unusually conferred by like institutions; or may confer degrees.
(22) No mention of degrees.
(23) Educational agency empowered to grant license to confer degrees.
(24) As defined in the articles of incorporation.
(25) If courses are four years beyond approved high school.
(26) Must be authorized by the legislature.
(27) Granted by the legislature upon recommendation of the department of education.
(28) Approved by the state corporation commission.
(29) Twenty years unless otherwise stated in the articles of incorporation.
(30) Grants licenses to confer degrees; power to visit and inspect, or to revoke license is not stated.
(31) Approved by governor, attorney-general and secretary of state.

* The totals for degree are:
26 as usually conferred in like institutions.
7 no mention of degrees.
2 authorized by the legislature only.
10 license from educational agency.
1 approved by corporation commission.
1 approved by the governor, attorney-general and secretary of state.
1 as defined in the articles.

# CHAPTER IV

## STATE CONTROL AS DEFINED IN THE CHARTERS OF THIRTY-NINE COLLEGES AND UNIVERSITIES

BRIEF

A. Laws under which private colleges[1] were founded:
   Most of the colleges were chartered by special act of the legislature.

B. Initial control:
   Generally the states limited in the charters of colleges the maximum amount of property the colleges could hold.
   The earlier policy of the states to limit the maximum amount of property is practically discontinued.
   No religious test is imposed as a basis for admission.
   States do not limit the courses that colleges offer.
   States generally place no limitations on the qualifications of the staff.
   States grant colleges the power to confer the usual degrees and diplomas.
   States exercise but little control over the managing boards of colleges through appointment of members, or through representation of state officials upon the boards.

C. Continuing control:
   The charters of three institutions contain a clause limiting the tenure of the charter.
   The charters of thirteen institutions reserve to the legislature the right to amend or repeal them.
   But few institutions are subject to visitation by the state or an agency of the state.

D. Activity of the states in the administration of the Colonial colleges:
   Certain states attempted to gain greater control over their respective colleges during the first decades following the revolution.

| | |
|---|---|
| Massachusetts | Harvard |
| Connecticut | Yale |
| Pennsylvania | University of Pennsylvania |
| New York | Columbia University |
| New Hampshire | Dartmouth College |

---

The previous chapter set forth the control of the state over private incorporated institutions of higher education as found

[1] The term college as used here includes private universities.

in the laws of the states under which such institutions are incorporated. This chapter [1] presents state control as defined in the charters of the private colleges and universities.

Any consideration of state control would be incomplete without an examination of individual charters. Many of the colleges and universities were chartered by state legislatures before general corporation laws were passed and such controls as exist must be found in them. General corporation laws were enacted during the last half of the nineteenth century to care for the rapidly increasing number of corporations. For instance, Pennsylvania enacted incorporation procedure in 1874, Maryland in 1867, and Illinois in 1872. The number of colleges and universities chartered by legislature may be estimated from the following table showing by decades the number of institutions established.[2]

| Decade | Number of Institutions | Decade | Number of Institutions |
|---|---|---|---|
| 1630-1779 | 12 | 1860-1869 | 82 |
| 1780-1789 | 4 | 1870-1879 | 69 |
| 1790-1799 | 9 | 1880-1889 | 82 |
| 1800-1809 | 15 | 1890-1899 | 98 |
| 1810-1819 | 9 | 1900-1909 | 44 |
| 1820-1829 | 20 | 1910-1919 | 23 |
| 1830-1839 | 40 | | |
| 1840-1849 | 58 | | |
| 1850-1859 | 77 | | |

In the preceding chapter it was found that fourteen states still provide for the chartering of colleges by special legislation. The practice of incorporating under general law began about 1880. In view of these facts and the evidence in the table above it is estimated that 70 per cent of existing institutions of higher education came into existence by special act of legislation. A full consideration of state control, then, must include the chartered institutions.

The topics considered are:

A. Laws under which the colleges were founded.

B. Initial control through

   *a.* Limitations pertaining to property, admissions, courses, staff, and degrees.

[1] The statements and conclusions in this chapter pertain only to the thirty-nine institutions examined; they apply generally in so far as the institutions selected are representative.

[2] Taken from data in Bureau of Education Bulletin No. 28, 1922, *Statistics of Universities, Colleges,* etc.

*b.* Limitations in the managing board with respect to approval of membership by the state, appointment of members by the state, and representation of state officials or state appointees.

C. Continuing control through
   *a.* Limited tenure of the institution.
   *b.* Reservation of power to the legislature to amend or repeal the charter.
   *c.* Visitation by the state through the legislature or educational agency.

D. Activity of the respective states in the administration of Colonial colleges.

The analysis of the charters of the thirty-nine institutions is contained in Table II.

### LAWS UNDER WHICH THE COLLEGES WERE FOUNDED

*Most of the colleges were chartered by special act of the legislature.* Until 1880 all the colleges considered, except Johns Hopkins, established in 1867, and Union, established in 1795, received charters from the legislatures of their respective commonwealths. Since 1880, the seven institutions considered were incorporated under general law. Even in the state of New York, where the Regents of the State of New York have operated as a chartering agency since 1784, such institutions as New York University, University of Buffalo, Vassar College, and Syracuse University were chartered by the legislature of the state. Union College is the only one chartered by the Regents. However, it was provided in the charters of these institutions that they were subject to regulatory control of the Regents. The fact that most of the colleges were chartered by special act has this significance: The control of the state is limited to the reservations in the charter, except in so far as the courts shall "take care that the objects of the trust are duly pursued, and the funds rightly appropriated." (See page 31.)

### INITIAL CONTROL

*Generally the states limited in the charters of colleges the maximum amount of property they could hold.* Evidence in the preceding chapter shows that the general laws of the states, in a few instances only, prescribe the minimum amount of property which

an institution of higher education must have before incorporation and in no instance the maximum amount. On the other hand, most of the colleges chartered by special act, especially the earlier ones, were limited in their maximum property holdings.

The limitations were imposed in one of three ways on amount of (*a*) real estate, (*b*) annual income, and (*c*) total property, real and personal. Illustrations are:

(*a*) *Harvard*: They and their successors shall and may purchase and acquire to themselves, or take and receive, upon free gift and donation, any lands, tenements, or hereditaments, within the jurisdiction of Massachusetts, not exceeding five hundred pounds per annum, and any goods and sums of money whatsoever. [1] This limitation characterized the Colonial colleges.

(*b*) *New York University*: Yield an annual income not exceeding $20,000. [2] [Other examples are Boston University and Vassar College.]

(*c*) *Tufts College*: Said corporation may hold real estate and personal property, to an amount not exceeding fifty thousand dollars, to be devoted exclusively to the purposes of education. [3] [Other examples are Duke University, University of Pittsburgh, and Wellesley College.]

*The earlier policy of the states to limit the maximum amount of property is practically discontinued.* Prior to the Dartmouth decision in 1819 all the colleges contained maximum property clauses in their charters. Between this decision and the Civil War seven of the institutions considered were restricted, six were not. Since the Civil War only two of the fourteen institutions were limited. Noteworthy in this connection is the fact that none of the states in their laws prescribe maximum limitations on the amount of property an institution may hold.

The limitations on property in the earlier charters have been raised or removed as the institutions increased in size and endowment. Wellesley College, for instance, was limited in its first charter in the amount of real and personal property to $600,000. [4] In 1884 this was raised to $5,000,000; again in 1911 to $10,000,000; and in 1921 to $20,000,000. [7] The restriction in the charter of New York University was removed in 1893; [8] from Duke University in 1911, [9] and from Harvard University in 1889. [10]

It is evident that the policy of states with regard to limiting

colleges in the amount of property has changed from restraint to freedom. Limitations are being removed from established institutions and new ones are founded without restriction. The control of the state over institutions of higher education by this means has practically ceased.

*No religious test is imposed as a basis for admission.* Most of the colleges were founded through the efforts of religious denominations: for instance, Harvard by the Congregationalists, Princeton by the Presbyterians, Rutgers by the Reformed Dutch, Ohio Wesleyan by the Methodists, Brown by the Baptists, Notre Dame by the Congregation of the Holy Cross, and Drake by the Christians. (See the catalogues of the respective colleges.) Nevertheless, such colleges are public to the extent that their doors are open to all applicants regardless of religious beliefs. The intent of the states that they be kept open is evident from the restraining clauses in the charters. Three citations illustrate:

*Columbia University*: Make such laws . . . as they shall think best . . . so that they . . . do not extend to exclude any person of any religious denomination whatever from equal liberty and advantage of education, or from any of the degrees, liberties, privileges, benefits, or immunities of the said college, on account of his particular tenets in the matter of religion. [11]

*University of Pittsburgh*: . . . nor shall any person, either as principal, professor, or pupil be refused admittance for his conscientious persuasion in matters of religion. [12]

*University of Chicago*: Beyond the requirement that "three-fifths of the trustees shall be members of the Baptist churches" [13] the charter prescribes that "no other religious test or particular religious profession shall ever be held as requisite for election to said Board or for admission to said University or to any department belonging thereto . . . or for election to any professorship, or any place of honor or emolument in said corporation, or any of its departments or institutions of learning. [13]

Similar clauses appear in approximately one-half the charters examined. States have not prescribed minimum standards for admission. Their concern has been that colleges receive students irrespective of their religious opinions. This policy still persists.

*States do not limit the courses that colleges offer.* Except in general terms, the charters usually say nothing about the subjects of instruction. The purpose of the college is usually stated to give

the youth training in the "arts and sciences," [14] or "learned languages, and in the liberal arts and sciences." [15] Instances departing from this and limiting the instruction follow:

*Tulane University*: I mean to foster such a course of intellectual development as shall be useful and of solid worth, and not be merely ornamental or superficial. [16]

*Rutgers University*: The charter requires that courses in divinity and English be given. [17]

*Washington University*: The institution is restrained from offering instruction "either sectarian in religion or party in politics . . . in any department." [18]

*Brown University*: . . . public teaching shall, in general, respect the sciences . . . sectarian differences of opinions shall not make any part of the public and classical instruction; although all religious controversies may be studied freely, examined and explained by the president, professors and tutors, in a personal, separate, and distinct manner, to the youth of any or each denomination. [19]

The citations from the charters of Tulane and Rutgers Universities are not limitations; the latter two are, but are confined primarily to sectarian differences. Aside from these, no limitations are prescribed. Evidently, it is the intent of the states that incorporated institutions of higher education shall be free to offer the courses they deem best.

*The states generally place no limitations upon the qualifications of the staff.* The clauses in the nine charters which in any way restrict the members of the staff pertain to membership on the managing board or to religious belief. It is prescribed in the charters of Rutgers University, University of Pittsburgh, and Lehigh University that the members of the instructional staff shall not be eligible for membership on the board. No religious test can be imposed upon the staff of the University of Pittsburgh, University of Buffalo, Tufts College, Northwestern University, Washington University, and the University of Chicago. Otherwise, no restrictions are imposed. It is the policy for states to give institutions freedom in the employment of the staff.

*The states grant power to confer the usual degrees and diplomas.* Except in two institutions general power has been given to the colleges to confer such degrees and literary honors as are usually conferred by like institutions. Tufts College was given power to confer the usual degrees except in medicine. [20] This restric-

tion was removed in 1867. [21] The original charter of the University of Buffalo defined in detail the standard for the degree of medicine and the procedure followed in awarding it. The year in which the University of Buffalo was chartered (1846) was the same year in which the American Medical Association was organized. The activities of that Association are reflected in the provisions of the charter. Note in the quotation from the charter three features: (*a*) that applicants for the degree of medicine meet certain standards, (*b*) that the degree be approved by the profession, and (*c*) that the medical staff receive no part of the fee.

> The council, [managing board] whenever they shall organize the medical department of such university, shall appoint not less than twenty persons, being practicing physicians and surgeons, to be curators of the medical department of said university, and the president of the medical society of the county of Erie, and the censors of the state medical society appointed for the senatorial district in which said university shall be situated shall be ex-officio curators thereof. [22]
>
> On the nomination of the medical faculty, and with the written consent of at least three of the curators . . . grant diplomas conferring the degree of doctor of medicine. . . . But no person shall receive such diploma unless he shall have pursued the study of medical science for at least three years after he attained the age of sixteen years, with some physician and surgeon, duly authorized by law to practice his profession; and shall also after that age have attended two complete courses of all the lectures delivered in some incorporated medical college, the last of which courses shall have been delivered by the medical faculty of said university. [23]
>
> Medical graduation and diploma fees shall not be paid to the medical faculty. [23]

The above does not illustrate state control so much as control by a professional group. The charter of Buffalo is distinctive in this regard. It is the policy of the states to give institutions freedom in conferring degrees.

*Summary.*—Generally, chartered institutions are not now restricted in their power to hold property, admit students, offer courses, employ staff, and confer degrees. Two concerns persist, —one, that the religious opinion of any applicant shall not bar him

from admission; the other, that the property and endowment be devoted wholly to purposes of education.

*The states exercise little control by imposing limitations upon the membership of the managing board.* It is difficult to estimate the extent of the control exercised by states over institutions by any activity with regard to the membership of the managing boards. The means of control are three: (*a*) initial approval of the membership, (*b*) appointing members, (*c*) placing state officials upon the board. Regarding the first, it is the usual custom for incorporators in their petition to the legislature to name the proposed members of the managing board and the manner of succession. The legislature approves this board and, since the names are given, is in a position to pass upon the general fitness of the members. No change can be made in the composition of the board when it is once approved or the manner of their succession without consent of the legislature, unless otherwise provided in the charter. Herein is a certain control. However, there is no policy regarding it.

It is not the policy for the state to appoint members of the boards. One exception is William and Mary, which became a state institution in 1906, resulting in the appointment of members by the governor by and with the consent of the senate [24], and others are Rutgers University and Dartmouth College which are recipients of benefits from the Federal Land Grant Act of 1862 in the use of which they are supervised by boards of ex-officio state officers or appointees of the state. Except in these three cases no members on the managing boards of the colleges considered are appointed by the state.

Reference to the composition of the several boards given in Table II, facing page 94, shows that it is not the policy of state officials to serve as representatives on boards. The strength of the various agencies represented on the boards, including the state officials, appears in the following table. Ex-officio state or city representation constitutes a very small per cent. For comparison, the membership of the original and present boards is given.

It is evident from this table that the states have a very small control through representation upon the managing board. The fact that the present percentage is one-half the original indicates that there is no disposition to increase control by this means.

In summary it may be said regarding the initial control of the state over chartered institutions of higher education that the

| Agencies Represented on the Board * | Original Charter | | Present Charter | |
|---|---|---|---|---|
| | Number | Per Cent | Number | Per Cent |
| Ex-Officio State or City | 33 | 4 | 21 | 2 |
| Lay Members Not Ex-Officio | 539 | 68 | 609 | 63 |
| Denominational Members | 216 | 27 | 200 | 21.5 |
| Alumni Members | ... | ... | 124 | 13.5 |
| Faculty Members | ... | ... | 1 | 0 |
| Total | 796 | 100 | 966 | 100 |

* The Board of Overseers of Harvard University is not included since it has no corporate powers in the management of the institution.

present policy, as observed from the charters, is freedom. Through boards, practically free from state representation, institutions determine their own policies over the amount of property, admissions, courses, staff, and degrees. The state is only concerned that religious tests not be applied to applicants for admission and that the property be devoted wholly to purposes of education.

### CONTINUING CONTROL

*The charters of three institutions contain a limited tenure clause.* The University of Southern California, Baylor University, and Saint Xavier College are limited in the tenure of their charters, respectively, to fifty, fifty, and thirty years. The time has subsequently been extended through renewal. It happens that these three institutions are located in states which provide a limited tenure in their general laws. (See Table I, facing page 68.) Since so few contain the limitation it is evidently the policy that no control be exercised through this means.

*The charters of thirteen institutions reserve to the legislature the right to amend or repeal them.* Of the institutions considered one-third are subject to further action by the legislature by virtue of a reservation in their charters empowering the legislatures to alter or repeal them. (Included here is Union College which is subject to such action by the Regents of the University of New York.) All the institutions except two are in the three states, Massachusetts, New York, and Ohio. Yale and Georgetown Universities are the two exceptions. The eleven others are: Union College, Western Reserve University, New York University, Oberlin College, Saint Xavier College, Ohio Wesleyan College, University of Buffalo, Tufts College, Vassar College, Boston University,

and Syracuse University. Although the percentage of states is small a greater percentage of institutions is affected since the three states containing practically all of the institutions in which such reservations appear are the larger centers of institutions of higher education.

In connection with this reserved right to amend or repeal, the limitation upon the action of the state should be considered. Opinions of the Supreme Court of the United States indicate that the primary function of the state is to see that the "objects of the trust are duly pursued and the funds rightly appropriated," and that any action by the state under this reserved power must be necessary "to secure either the object of the grant or any public right" and not defeat or substantially impair the object of the grant, or any vested rights under it." (See page 30.) Further support of this opinion is found in the laws of New York state under which Syracuse University and Vassar College were chartered. These two institutions are subject, as stated in their charters, to the provisions of Title 3, Chapter 18, of the Revised Statutes. [25] Two clauses from this chapter are pertinent here, one containing the reservation, and the other directing how the state shall act. They are:

> The charter of every corporation that shall hereafter be granted by the legislature shall be subject to alteration, suspension, or repeal in the discretion of the legislature. (Sec. 8.)
>
> No officer or director of a corporation shall be suspended or removed from office, otherwise than by the judgment of the supreme court in a civil action . . . and all actions and proceedings against a corporation when the relief sought, or which can be granted therein, shall be the dissolution of such corporation, or the removal or suspension of any officer or director thereof, shall be brought by the attorney-general in the name of the people of the state. (Sec. 20.)

It appears, therefore, that any action by the state in altering the charter of an institution must be such as can be justified in the courts.

*But few institutions are subject to visitation by the state or the educational agency of the state.* Regulation by the state is obtained in one of three ways: (*a*) visitation by the educational agency of the state, (*b*) board of overseers composed wholly or largely of state officers or appointees of the state, (*c*) annual reports to the legislature. Of the institutions considered, those

subject to visitation by the educational agency are all located in the state of New York. The Regents of the University of New York are given visitorial power.[1] For instance, the charter of Syracuse University contains this clause:

> The said University shall be subject to the visitation of the Regents of the University of this State, in the same manner and to the same extent as the various colleges of this State. [26]

Boards of overseers representing the state are not the practice. The most outstanding instance is Harvard University whose board of overseers until 1865 was composed largely of state officials or appointees of the state. (See page 81 ff.) There are visitorial boards at Dartmouth College and Rutgers University where the state exercises a supervisory control over the use of the funds it donates; and at the University of Pittsburgh where the State of Pennsylvania provides an advisory board to approve the action of the trustees of the University in regard to the school of mines and engineering, toward the establishment of which the state appropriated $50,000 in 1895. The duties of the board of advisors are thus defined in the appropriation act:

> The control of this School shall be vested in the Trustees and Faculty of the Western University of Pennsylvania [University of Pittsburgh], and the Governor, the Secretary of Internal Affairs, and the State Superintendent of Public Instruction, acting as an advisory board on behalf of the Commonwealth. The curriculum and the entrance examinations shall be adopted by the action of the Faculty and Trustees of the University, and be approved by the advisory board on behalf of the Commonwealth. [27]

In the charter of Tufts College, the State of Massachusetts reserves the right to appoint a board of overseers "with all necessary powers for the better aid, preservation, and government thereof." [28] (This board has never been appointed.) Except where the state is a party in the support of the institution, it does not exercise control through a visitorial board.

Three institutions are required to render reports to the legislature. An amendment to the charter of Yale University in 1796 directs the president and fellows to "annually render to the General Assembly an account of the receipts and expenditures of the moneys belonging to said college." [29] The two other institu-

[1] Concerning the responsibilities of the Regents see page 79.

tions are the University of Pennsylvania and the University of Pittsburgh. These have received generous support from the state. The clause in the charter of the University of Pennsylvania is cited later. (See page 88.) Regarding the University of Pittsburgh, the state of Pennsylvania in the act appropriating to the institution in 1895 funds for the establishment of a school of mines and mining-engineering directs the institution to render annually

> . . . to the Superintendent of Public Instruction a statement of the course of study which has been pursued, and such other information in relation to the work of the School as may be necessary in order to a full understanding of its operation. The Trustees of the University shall, furthermore, annually submit to the Auditor General a statement of the manner in which all funds received have been applied during the year for which the report is made, which report shall be embodied, together with the report hereinbefore provided for, in the annual report to the Superintendent of Public Instruction. [27]

It is not the policy for states to require annual reports from chartered institutions except where the states contribute largely toward their support.

### ACTIVITY OF THE RESPECTIVE STATES IN THE ADMINISTRATION OF THE COLONIAL COLLEGES

The Colonial colleges have been exposed longer to all the social and political struggles that attended the rise of states and, consequently, register more clearly the efforts at state control and trends in policy. The nine institutions are:

| Institution | State | Date |
|---|---|---|
| Harvard University | Massachusetts | 1636 |
| William and Mary College | Virginia | 1693 |
| Yale University | Connecticut | 1701 |
| Princeton University | New Jersey | 1746 |
| University of Pennsylvania | Pennsylvania | 1753 |
| Columbia University | New York | 1754 |
| Brown University | Rhode Island | 1764 |
| Dartmouth College | New Hampshire | 1769 |
| Rutgers University | New Jersey | 1770 |

*Certain states attempted to gain greater control over their colleges during the first decades following the Revolution.* Especially evident is the effort of the Colonial states to secure control

of their respective colleges during the years when they were defining functions in their new capacity as states. No change was registered in the charters of William and Mary, Princeton, Brown, and Rutgers. These are passed without consideration. In the cases of the other five, strenuous efforts were made by the respective states that resulted in changes in their charters. The greatest activity came between 1779 and 1820. During this period the composition of the Board of Overseers of Harvard University was changed four times.[1] The charter of Columbia (King's College) was changed twice; that of the University of Pennsylvania three times; Yale, once. During this period New Hampshire attempted to change the charter of Dartmouth. The efforts of the states to amend charters quieted after the Dartmouth decision by the United States Supreme Court in 1819. This decision closed to states any action on their part, unless power was reserved, without consent of the trustees of the institutions concerned. On page 94 are graphically presented the changes that took place in the boards. The participation of the state in the management of the institutions is represented by the percentage of the membership on the boards who are state officials or appointees of the state.

There are evident in the graphs three periods: (*a*) little participation by the states when the institutions were chartered, (*b*) great participation during the first decades following the Revolution; and (*c*), more recently, little or no participation. There follows a brief account of the activities of the states in the control of the five institutions.

*Harvard University.*—Harvard College was established by vote of the General Court of the Colony of Massachusetts in 1636, the Court giving four hundred pounds towards its support. Twelve very eminent men of the colony were appointed by the Court in 1637 to "take orders for a college at Newton," [30] afterward Cambridge. The interest of the commonwealth in the institution as marked by these first acts continued into the nineteenth century both in giving financial aid[2] and participating in the oversight of the college.

The management of the affairs of the college by act of 1642 was placed in a Board of Overseers consisting of the "Governor and

[1] The corporation was not changed.

[2] Prior to the Revolution, Massachusetts contributed toward the College 18,900 acres, 23,403 pounds and the revenue from Charleston Ferry. Clews, *"Educational Legislation and Administration of the Colonial Governments,* p. 501.

Deputy-Governor for the time being, and all the magistrates of the jurisdiction, together with the teaching elders of the six next adjoining towns, and the president of the college." [31] This board of overseers managed the institution until 1650, at which time a charter was granted. This charter created another body, the "President and Fellows of Harvard College," consisting of seven persons, the president, five fellows, and the bursar, and vested in them the corporate powers. The body had indefinite tenure, and election was by coöptation "procuring the presence of the overseers of the college and by their counsel and consent." [32] Under this charter of 1650 the state exercised no control through the corporation, but retained representation on the Board of Overseers of 74 per cent.

Further amendment in 1657 in the form of an appendix to the charter of 1650 granted greater powers to the corporation, the president and fellows. A word about the functions of these two boards will aid in understanding the strength of the state's control at this time and later. The corporate management of the college rested with the president and fellows. The charter of 1650 gave this body power

> to make from time to time such orders and by-laws, for the better ordering and carrying on the work of the College, as they shall think fit; provided the said orders be allowed by the Overseers. [34]

The appendix to the charter in 1657 gave the president and fellows power to act without first securing the consent of the overseers; the function of the latter was limited to supervision.

> The corporation shall have power, from time to time, to make such orders and by-laws, for the better ordering, and carrying-on of the work of the College, as they shall see cause, without dependence upon the consent of the Overseers foregoing; provided always, that the corporation shall be responsible unto, and those orders and by-laws shall be alterable by the Overseers, according to their discretion. [35]

The functions as thus defined continue to date.

The corporation as constituted in the charter of 1650 has not changed. The Board of Overseers has changed several times. Since in these changes the activity of the state is evident the several changes are noted.

The constitution of the Commonwealth, 1780, redefined the

membership of the Board of Overseers in conformity therewith by naming the governor, lieutenant-governor, council and senate to take place of the former state officials. By this change the participation of the state in the membership was 86 per cent.

The Act of 1810 again reconstituted the board to consist of the

> Governor, Lieutenant-Governor, Counsellors, President of the Senate, and Speaker of the House of Representatives of the Commonwealth, and the President of Harvard College for the time being, with fifteen ministers of Congregational churches, and fifteen laymen, all inhabitants within the State. [36]

The large number of laymen and ministers who were not representatives of the state reduced the percentage of state participation to 39 per cent. Two years later, however, this act of 1810 was repealed and the former organization restored, making the percentage again eighty-six. But in 1814 the Act of 1812 was repealed and that of 1810 re-enacted with the addition of the senate as part of the board. The percentage now was 68. These rapid changes are bewildering. It is not a wonder that the Corporation addressed a memorial to the General Court in 1812 taking exception to the representation of certain state officials upon the Board of Overseers. The following extract is significant as a statement of policy:

> . . . most important benefits would accrue to the seminary, from a body of Overseers, coming not incidentally and casually to the duty; but chosen as vacancies should occur with special reference to the object. . . . It cannot be denied that the members of the Senate must necessarily, as a body, be under disadvantages for the efficient and regular discharge of many of the duties of Overseers. Their connection with the university depending upon the contingency of an annual election, must, it is apprehended, have some effect to discourage a disposition to enter thoroughly, and systematically, into the affairs of the establishment. [37]

No further changes were made in the composition of the Board of Overseers until 1851 and, again in 1865. These were the last.

The Act of 1851 removed the senate from membership, defined the tenure as six years, discontinued the requirement that fifteen of the members be ministers, and made election of the thirty members, not ex-officio, by joint ballot of the senators and representatives.

The governor, lieutenant-governor, president of the senate, and speaker of the house of representatives of the Commonwealth and the secretary of the board of education were ex-officio representatives. [38] Including the appointees by the senators and representatives this change brought the participation of the board to 94 per cent.

In 1865, in response to a sentiment "that it would be better for the community and for the interests of learning, as well as for the University, if the power to elect the overseers were transferred from the Legislature to the graduates of the College," [38] the charter was further amended to place, thereafter, the appointment of the members, except the president and treasurer, ex-officio, in the hand of the alumni. [38] At this point state representation ceased.

Summarily, several observations are possible concerning the control of the state of Massachusetts over Harvard University through participation in the membership of its boards:

1. The state has never maintained any control through membership in the Corporation.

2. The activity of the state during the decades following the Revolution registered frequent changes in the composition of the Board of Overseers, the per cent of state participation ranging from 39 to 94.

3. The control maintained by the state through representation on the Board of Overseers ceased in 1865, and, thereafter, was placed with the alumni of the institution.

Representation upon the board is not the only means provided for control by the state over Harvard University. The Constitution of 1780, in which the charter of 1650 was confirmed, contains this provision:

> . . . nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay. [39]

Note that the last clause restricts the legislature of the state to action within the power of the legislature of the province. Since no reservation of power to the legislature over the corporation was

contained in the charter of 1650, and in such case the Dartmouth decision prevents a state from making any change without consent of the trustees, it is doubtful if this provision in the constitution is effective. Furthermore, Massachusetts has recognized the right of the president and fellows and overseers to validate any change by their consent. In every act changing in any way the charter of the institution, except the Act of 1812, which was in effect but two years, the legislature has included a clause that the Act in question was not valid until the overseers and president and fellows accepted the provision. [40] It may be concluded that the state of Massachusetts, other than through the courts, has now little or no direct control over Harvard University.

*Yale University.*—Yale College was chartered by the General Court of the Colony of Connecticut in 1745, but since 1701 had operated as a Collegiate School under the management of "Trustees, Partners, and Undertakers." [41] Unlike Harvard, the functions of management and oversight were united in one corporate body named in the charter of 1745 as the "President and Fellows of Yale College," consisting of eleven members, tenure indefinite, and election by coöptation. Power to serve the two functions are thus defined in the charter:

> Oversight, full and complete liberty, power, and privilege to furnish, direct, manage, order, improve, and encourage from time to time and in all times hereafter the said collegiate school. [42]

Participation by the state in the membership of the board came in 1792 soon after it entered upon statehood. The occasion was the further support of the institution. Up to this time the state had contributed toward the support of the college, 1,500 acres, 25,403 pounds, and the income from the New Haven Wharf, [44] but did not ask for representation. In 1792, however, a grant of certain "balances on all taxes," etc., [45] was made under the condition that the president and fellows be enlarged to include the "Governor, Lieutenant-Governor, and six senior assistants in the Council." [45] (Became six senior senators in 1819 to conform with a change in the constitution.) The state officials thus constituted 42 per cent of the membership of the board. This continued till 1872 when the general assembly authorized the substitution of six alumni for the six senior senators, the governor and lieutenant-governor still remaining as ex-officio members. [46]

By this act the percentage of state representation was reduced to twelve, which continued and is the situation at present.

The state of Connecticut also safeguarded a control through a reservation in the charter. The president and fellows were empowered to make all such laws as they should think fit and proper for the management of the institution but with this reservation:

> . . . which shall be laid before the Assembly as often as required, and may also be repealed or disallowed by the Assembly when they shall think proper. [43]

The Dartmouth decision does not apply here. This provision is an agreement between the state and the Corporation of Yale College. However, it is not the policy of the state ever to take arbitrary action. The intent in this regard is definitely stated in the Act of 1887, authorizing the use of the name "Yale University":

> . . . And the acceptance of this act by said corporation shall not operate to subject the charter to repeal, alteration, or amendment without its consent. [47]

The state is kept advised of the financial affairs of the institution by the annual reports which it renders to the General Assembly. (See page 79.)

To conclude, the basis of control of the state of Connecticut over Yale University rests in annual reports, participation in the membership of the managing board, and reservation to alter or repeal the laws of the board, the last, however, with the consent of the Corporation.

*University of Pennsylvania.*—In 1753 Thomas and William Penn, Proprietors of the Province of Pennsylvania, granted a charter to the trustees of the Academy and Charitable School in Philadelphia which had been in operation since 1749. Two years later the name was changed to "The College, Academy and Charitable School." The trustees under the charter were twenty-four, including Benjamin Franklin. [48] No ex-officio members were on the board until 1779. At this time the assembly of the commonwealth, upon report of a committee appointed to inquire into the state of the college, dispossessed the trustees of their charter privileges and estates and created a new board. The

cause of the action is contained in the report, an abstract from which follows:

> That divers of the late trustees of the said college have during the present contest with Great Britain joined the British army and now stand attained as traitors . . . that the said Corporation in its general management and conduct has shown an evident hostility to the present Government and Constitution of this State, and in divers particulars, enmity to the common cause . . . [and that the trustees] departed from the plan of the original founders, and narrowed the foundation of the said institution. [49]

The board under the new charter of 1779 consisted of the president of the supreme executive council of the commonwealth, the vice-president, speaker of the general assembly, chief justice of the supreme court, judge of the admiralty, attorney-general, three representatives in congress, two justices of the supreme court, secretary of the supreme executive council, treasurer; the senior minister of the Episcopal, Presbyterian, Baptist, Lutheran, German Calvinist, Roman Catholic churches; Benjamin Franklin; and five others. [50] In this great array 50 per cent of the members were so by virtue of a state office.

Naturally, the former trustees and staff who were deprived of their positions resented this action. They presented a petition to the Council of Censors, a body elected by the people to "inquire whether the executive and legislative branches of the government have performed their duty as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled by the constitution." [51] This Council was prayed in the petition to declare unconstitutional the Act of 1779. This precipitated discussion which ended finally by an act of the legislature in 1889, voiding the action of 1779 and restoring the surviving trustees and staff of the College, Academy, and Charitable School. [52] The injustice of the Act of 1779 is frankly confessed in the new charter:

> . . . *whereas* . . . said trustees and corporation and also the provost, vice-provost, professors and all other masters, teachers, ministers and officers of the said college, academy and charitable school were without trial by jury, legal process or proof of misuser or forfeiture, deprived of their said charters, franchises and estates . . . : all of which is repugnant to justice, a violation of the constitution of this com-

monwealth and dangerous in its precedent to all incorporated bodies and to the rights and franchises thereof. [52]

The board as restored had no state officials as members.

In 1791 an act united the University of Pennsylvania and the College, Academy and Charitable School under the name of the University of Pennsylvania, and provided for a board to consist of twenty-four members, twelve appointed by each of the two boards, together with the governor. [53] No further changes have been made in the composition of the board. It remains to-day as then constituted with 4 per cent representation.

This Act of 1791 also required the trustees to lay annually a statement of the funds of the institution before the legislature.

This account of the activity of the state of Pennsylvania registers the radical changes that resulted from wartime emotionalism. The final outcome was the policy, which continues at present, that the institution should be governed by a self-perpetuating board with only the governor to represent the state and with annual statements of its financial condition for the guidance of the legislature.

*Columbia University.*—Columbia University began as King's College in 1754 by grant of charter from the Crown. Management was placed in a complex body of governors consisting of two members from England (Lord Archbishop of Canterbury and Lord Commissioner for Trade and Plantations), governor, lieutenant-governor, eldest councilor, judges of the supreme court, secretary, treasurer, attorney-general, speaker of the general assembly, mayor of the City of New York, rector of Trinity Church, a minister from each of four other denominations (Reformed Protestant Dutch, Ancient Lutheran, French, and Presbyterian), president of the college, and twenty-four others. [54] In this group state officials constituted 25 per cent.

During the war the college ceased for a short period. At the opening of the session of the legislature of the state in 1784 the promotion of education was a matter of importance and with it the reopening of the college. Governor Clinton in his message to the legislature in January recommended action looking toward the revival and encouragement of seminaries of learning. On February 19 a bill was presented entitled "An act for establishing a university within the state." [54] On March 30 the majority

of the surviving governors of King's College, desirous of reviving the institution, submitted a petition to the legislature stating that a sufficient number of governors could not be convened to carry on the business of the college, and that many points in the charter were not consistent with the "liberality" and "religious freedom" of the new constitution, and prayed the legislature to revise the charter. [55]

It is not necessary to review the discussion that accompanied the evolution of the centralized system of education under the Regents of the University of the State of New York with King's College occupying a strategic position by virtue of its existence as the only institution of higher education at the time in the state. This is fully set forth in a bulletin of the United States Bureau of Education. [55]

The resulting legislation was the creation of the Regents of the University of the State of New York, a corporate body, vested with power to manage institutions created under its authority, and King's College. The board was an unwieldy body, widely scattered, and extensively representative of political and religious interests. The following summary of the groups which constituted the board is evidence: [56]

*a.* State officials: governor, lieutenant-governor, president of the senate, speaker of the assembly, mayor of the City of New York, mayor of the City of Albany, attorney-general, and secretary of state.

*b.* County members: two from each of the twelve counties in the state.

*c.* Clerical members: a representative from each of the religious denominations in the state.

*d.* Founders' members: a representative named by the founder of each institution if he endows it with real and personal property of the yearly value of 1,000 bushels of wheat, and if the institution is admitted to the University.

e. Members at large: twenty-four others. (These were added in an amendment later in the same year, November 26.)

Business necessarily dragged under such a body. It was difficult for them to convene. All the property was in their hands. Since the majority of the members were in and about New York, King's College was favored. Jealousies arose. [57]

Relief came in the legislation of 1787 which resulted in the

restoration of the charter of King's College of 1754 with the name changed to Columbia College. At the same time Regents of the University of the State of New York was established. Each was separate with corporate rights. The trustees of Columbia College were to consist of twenty-four members (beginning with twenty-nine, none to be appointed until the number was reduced by death or resignation to twenty-four). The members were not to be such "in virtue of any offices, character or descriptions whatever." [57] This act brought to a close the participation of the state of New York in the membership of the managing board of Columbia College.

The Act of 1787 gave the Regents of the University of the State of New York power to "visit and inspect all the colleges, academies or schools which are or may be established in the state." Since the charter of 1754, which was restored to Columbia, preceded the establishment of the Regents of the University, and no clause was included in the Act of 1787 specifically subjecting the College to the visitation of the Regents, nor in the subsequent charter of 1810, [58] the supervision of the Regents probably does not extend to this institution. There is justification in the conclusion that the state of New York, except through the courts, has no direct control over Columbia University.

*Dartmouth College.*—The efforts of the state of New Hampshire to gain control of Dartmouth College, and the resulting decision of the Supreme Court of the United States have been described in Chapter II. (See page 25.) It is not necessary to repeat the account. Had the plans of the state carried, the percentage of state representation on the board would have been seventy-seven.

This concludes the account of the activities of the states to gain control over Colonial colleges. The three periods are evident: (*a*) the period prior to the Revolution when there was little participation by the states, (*b*) the first decades following statehood when there was great participation, or attempted participation, (*c*) the more recent period of little or no participation. The efforts at control, as viewed to-day, were distressingly awkward. Crass political manipulation was present. The managing bodies were unwieldy. They were heavy with state officials who came to the membership casually and not to the purpose. The experience cannot but lead to the conclusion that control by the state through

representation on the managing boards is neither desirable nor effective.

## GENERAL SUMMARY

The control which states maintain over incorporated institutions of higher education as defined in the charters of thirty-nine selected private colleges and universities is summarized thus:

Thirty of the institutions considered are chartered under special act of legislation; nine under general law.

States maintain little or no control by limiting educational institutions in the matter of property, admissions, courses, staff, or degrees. The earlier practice of restricting the maximum property holdings is being discontinued.

The charters of approximately one-half of the institutions contain clauses limiting the imposition of any religious test as a basis for admission.

States exercise an initial control over chartered institutions through their legislatures as approving agencies. It is not the practice of states to retain control through representation upon the managing board.

Continuing control is maintained by states over a few chartered institutions of higher education through limited tenure of the charter or through regulatory control by an agency of the state. The charters of three institutions contain limited tenure clauses. Institutions in New York State, except Columbia, are subject to visitation by the Regents of the University of New York. Three institutions render annual reports to the legislature.

There is reserved to the legislature in the charters of one-third of the institutions the right to amend or repeal the charter.

During the first decades following the revolution, Massachusetts, New York, Pennsylvania, Connecticut, and New Hampshire, showed great activity in extending control over their respective colleges. For the most part this control has been relinquished.

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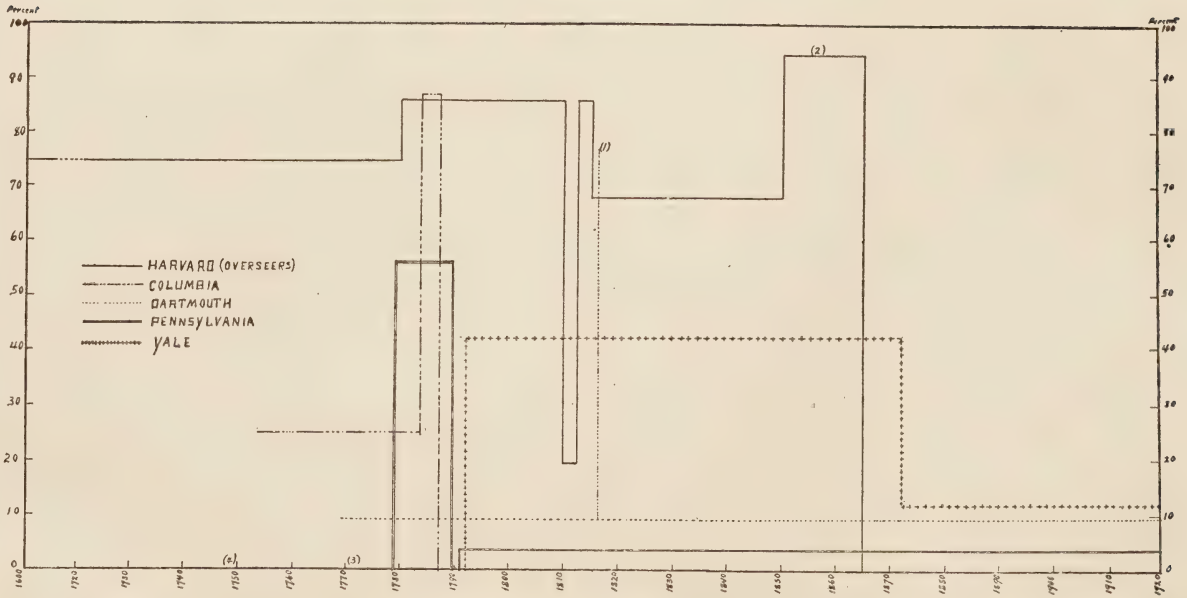
18. *Act of 1853 Incorporating Eliot Seminary and Amendment, 1857*, Sec. 2 of Act of 1857. (Copy in library of Carnegie Foundation for the Advancement of Teaching, New York.)
19. Clews. *Supra*, p. 194.
20. Tufts College. *Supra*, "Act of 1852," Sec. 2.
21. *Ibid.*, "Act of 1867," Sec. 2.
22. *Laws of New York*, 1846, Chap. 193, Sec. 9.
23. *Ibid.*, Sec. 11.
24. Virginia. *General Laws*, p. 246.
25. Syracuse University. *Charter and By-Laws, 1925*, "Act of 1870, Vassar College." *By-Laws of the Board of Trustees, Supplement to Report of the President*, Sept., 1922.
26. Syracuse University. *Supra*, "Laws of 1920," Chap. 81, Dec. 13.
27. University of Pittsburgh. *Supra*, p. 104.
28. Tufts College. *Supra*, "Act of 1852," Sec. 7.
29. The Yale Corporation. *Charter, Legislative Acts, etc.*, p. 18.
30. Clews. *Supra*, p. 8.
31. *Ibid.*, p. 10.
32. *Ibid.*, "Charter 1650," p. 13.
34. *Ibid.*, p. 14.
35. *Ibid.*, "Appendix to Charter 1650," p. 33.
36. Harvard University. *Catalog, 1924-25.* "History and Government," p. xxvi.
37. Peirce, B. *History of Harvard University.* "Memorial of the Corporation to the General Court, 1812," pp. 89, 90.
38. Harvard University. *Catalog. Supra*, p. xxvii.
39. *Ibid.*, p. xxiv.
40. *Ibid.*, "Acts of 1810, 1814, 1851, 1865."
41. Clews. *Supra*, p. 121 *et seq.*
42. Clews. *Supra*, "Act of 1701," p. 122.

43. Clews. *Supra,* "Charter 1745," p. 152.
44. Clews. *Supra,* "Table of Grants and Appropriations," p. 501.
45. Yale University. *The Yale Corporation, Charter, Legislation,* etc. 1923, p. 15.
46. *Ibid.,* p. 16, 17.
47. *Ibid.,* "Act of 1887."
48. Clews. *Supra,* pp. 300-302.
49. U. S. Bureau of Education. Bull. 1892, No. 2, "Circular of Information," p. 83.
50. University of Pittsburgh. *Supra,* p. 36.
51. *Ibid.,* p. 42.
52. *Ibid.,* pp. 52, 53.
53. *Ibid.,* p. 56.
54. Columbia University. *Charter and Official Records, 1920,* pp. 12, 13.
55. U. S. Bureau of Education. Bull. 1900, No. 3, "Circular of Information." The University of the State of New York, p. 49 ff.
56. Columbia University. *Supra,* p. 38 ff.
57. *Ibid.,* p. 45 ff.
58. *Ibid.,* p. 53 ff.
60. Harvard University. *Catalog. Supra,* p. xxvi.
61. Northwestern University. *The Charter and Its Amendments,* etc., 1921, "Charter 1851," Sec. 9.
62. Drake University. *Articles of Incorporation and By-Laws, 1924. Duke University Record,* Vol. XX, No. 10, Art. X.
63. Tulane University. *Supra,* Act. 43, Sec. 2, "General Assembly, 1884."
64. Tufts College. *Supra,* "Act of 1852," Sec. 6.
65. *Ibid.,* Sec. 7.
66. *Laws of New York,* 1910, Chap. 33, Sec. 1.
67. *Supra,* "Act of 1853 Incorporating Eliot Seminary."
68. Lehigh University. *Act of Incorporation,* 1866. (Copy in library of Carnegie Foundation for the Advancement of Teaching, N. Y.)
69. Tulane University. *Supra,* "Letter from Paul Tulane," p. 6.
70. University of Buffalo. *Laws of New York,* "Act of 1846," Chap. 193, Sec. 11.
71. Johns Hopkins University, *Register, 1924-25,* "Act of 1867," Sec. 2.
72. *Laws of New York.* "Act of 1846," Chap. 193, Sec. 9.
73. University of Buffalo. *Supra,* Sec. 4.
74. New York University. *Historical Papers,* Vol. I, "Charter 1831," Art. V.
75. Northwestern University. *Supra,* Sec. 3.
76. *Ibid.,* "Second Amendment," Sec. 1.
77. Western Reserve University. *By-Laws, 1921,* Art. XI.




(1) The attempt of the State of New Hampshire to gain greater control of Dartmouth in 1816. Not successful due to the Dartmouth College decision by the U. S. Supreme Court in 1819.
(2) Includes the thirty members appointed by the senators and representatives.
(3) Yale was founded in 1701 but the state was not represented on its board until 1792.
(4) Pennsylvania was founded in 1749 but the state was not represented on its board until 1779.

## GRAPH I

PERCENTAGE OF THE MEMBERSHIP OF THE BOARDS OF HARVARD, YALE, COLUMBIA, PENNSYLVANIA, AND DARTMOUTH WHO ARE STATE OFFICIALS OR APPOINTEES OF THE STATE, SHOWING THE EFFORTS OF THE STATES TO SECURE GREATER CONTROL OF THEIR RESPECTIVE COLLEGES, AND THE PRESENT STATUS.

## TABLE II

### ANALYSIS OF THE CHARTERS OF THIRTY-NINE SELECTED PRIVATE COLLEGES AND UNIVERSITIES HAVING AN ENROLLMENT OF 1,000 OR MORE

| College or University | State | Date Established | Law Under Which Chartered | Reservation in the Charter to Amend or Revoke | Subject to Visitation by the State | Limitations in the Original Charter Pertaining to | | | | | Membership of the Managing Board | | | | | | | | | | | | Tenure of Office of the Board Members | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | Original Charter | | | | | | | Present Charter | | | | | | | Original Charter | | | | Present Charter | | | |
| | | | | | | Amount of Property | Admissions | Courses | Staff | Degrees | Ex-officio State or City | Ex-officio President | Lay Members not Ex-officio | Denominational Members | Faculty Members | Total | Ex-officio State or City | Ex-officio President | Lay Members not Ex-officio | Denominational Members | Alumni Members | Faculty Members | Total | Lay Members not Ex-officio | Denominational Members | Alumni Members | Faculty Members | Lay Members not Ex-officio | Denominational Members | Alumni Members | Faculty Members |
| Harvard (Corporation) | Mass. | 1636 | Sp. | (3) | (3) | Yes | .. | .. | .. | .. | .. | 2(26) | 5 | .. | .. | 7 | .. | 2(26) | 5 | .. | .. | 7 | Life | .. | .. | .. | Life | .. | .. | .. |
| Harvard (Overseers) | Mass. | | | .. | .. | .. | .. | .. | .. | .. | 20 | 1 | .. | 6 | .. | 27 | .. | 2(26) | .. | .. | 30 | .. | 32 | .. | Ex-Of. | .. | .. | .. | .. | 6 | .. |
| William and Mary | Va. | 1693 | Sp. 1 | No | No | Yes | .. | .. | .. | .. | .. | .. | 18 | .. | .. | 18 | 11(29) | .. | .. | .. | .. | .. | 11 | Life | .. | .. | .. | 4 | .. | .. | .. |
| Yale | Conn. | 1701 | Sp. | Yes | Yes | Yes | .. | .. | .. | Usual | .. | .. | .. | 11 | .. | 11 | 2 | 1 | 10 | .. | 6 | .. | 19 | Life | .. | .. | .. | Life | .. | 6 | .. |
| University of Pennsylvania | Pa. | 1749 | Sp. 2 | No | Yes | Yes | .. | .. | .. | Usual | .. | .. | 24 | .. | .. | 24 | 1 | .. | 24 | .. | .. | .. | 25 | Life | .. | .. | .. | Life | .. | .. | .. |
| Princeton | N. J. | 1746 | Sp. 1 | No | No | Yes | (13) | .. | .. | Usual | 1 | 1 | 21 | .. | .. | 24 | 1 | 1 | 24 | .. | 8 | .. | 34 | Life | .. | .. | .. | Life | .. | 4 | .. |
| Columbia | N. Y. | 1754 | Sp. 1 | No | No | Yes | (13) | .. | .. | .. | 12 | 1 | 22 | 5 | .. | 40 | .. | 1 | 17 | .. | 6(35) | .. | 24 | Life | Ex-Of. | .. | .. | Life | .. | 6 | .. |
| Brown | R. I. | 1764 | Sp. | No | No | Yes | (13) | .. | .. | Usual | .. | .. | .. | 36 | .. | 36 | .. | .. | .. | 36 | .. | .. | 36 | Life | .. | .. | .. | .. | Life | .. | .. |
| Dartmouth | N. H. | 1769 | Sp. 1 | No | No | Yes | (13) | .. | .. | Usual | 1 | 1 | 10 | .. | .. | 12 | 1 | 1 | 5 | .. | 5(35) | .. | 12(30) | Life | .. | .. | .. | Life | .. | Life | .. |
| Rutgers | N. J. | 1770 | Sp. 1 | No | (10) | Yes | .. | (15) | (21) | Usual | 4 | .. | 37 | 13 | .. | 54 | 3 | .. | 41 | .. | .. | .. | 44 | Life | Life | .. | .. | Life | .. | 4 | .. |
| Union | N. Y. | 1795 | Gen. | Yes | Yes | Yes | (13) | .. | .. | Usual | 3 | .. | 21 | .. | .. | 24 | 6 | .. | 15 | .. | 4 | .. | 25 | Life | Life | .. | .. | 7 | 7 | .. | .. |
| Georgetown | D. C. | 1789 | Sp. | Yes | No | Yes | .. | .. | .. | Usual | .. | .. | .. | 4 | .. | 4 | .. | .. | .. | 6 | .. | .. | 6 | .. | .. | .. | .. | 3 | .. | .. | .. |
| University of Pittsburgh | Pa. | 1819 | Sp. | No | No | Yes | (13) | .. | (21) | Usual | .. | .. | 26 | .. | .. | 26 | 2 | 1 | 30 | .. | .. | .. | 33 | Life | .. | .. | .. | 3 | .. | 3 | .. |
| George Washington | D. C. | 1821 | Sp. | No | No | No | (13) | .. | .. | Usual | .. | .. | 13 | .. | .. | 13 | .. | 1 | 18 | .. | 6(35) | .. | 25 | Life | .. | .. | .. | 3 | .. | 3 | .. |
| Western Reserve | Ohio | 1826 | Sp. | Yes | No | No | .. | .. | .. | Usual | .. | 1 | 12 | .. | .. | 13 | .. | 1 | 18 | .. | 6 | 4(36) | 25 | Life | .. | .. | .. | .. | .. | 6 | 3 |
| New York | N. Y. | 1831 | Sp. | Yes | Yes | Yes | .. | .. | .. | Usual | 5 | .. | 32 | .. | .. | 37 | .. | .. | 32 | .. | .. | .. | 32(31) | 4 | .. | .. | .. | 4 | .. | .. | .. |
| Oberlin | Ohio | 1834 | Sp. | Yes | No | No | .. | .. | .. | Usual | .. | .. | 12 | .. | .. | 12 | .. | 1 | 18 | .. | 6 | .. | 25 | Life | .. | .. | .. | 6 | 6 | 6 | .. |
| St. Xavier | Ohio | 1842 | Sp. | (4) | No | Yes | .. | .. | .. | Usual | .. | .. | .. | 5 | .. | 5 | .. | .. | .. | 8 | .. | .. | 8 | .. | 7 | .. | .. | .. | 7 | .. | .. |
| Ohio Wesleyan | Ohio | 1842 | Sp. | Yes | No | No | .. | .. | .. | Usual | .. | .. | .. | 21 | .. | 21 | .. | 1 | 10 | 30 | 10 | .. | 51 | Life | .. | .. | .. | 5 | 5 | 5 | .. |
| Notre Dame | Ind. | 1844 | Sp. | No | No | No | .. | .. | .. | Usual | .. | .. | .. | 4 | .. | 4 | .. | .. | .. | 6 | .. | .. | 6 | .. | .. | .. | .. | .. | .. | .. | .. |
| University of Buffalo | N. Y. | 1846 | Sp. | Yes | Yes | (12) | (14) | .. | (22) | (23) | 2 | .. | 16(27) | .. | (28) | 18 | .. | .. | 24 | .. | 12 | (28) | 36 | 4 | .. | .. | (28) | 4 | .. | 4 | (28) |
| Tufts | Mass. | 1850 | Sp. | Yes | (11) | Yes | (13) | .. | (22) | (24) | .. | .. | 23 | .. | .. | 23 | .. | .. | 20 | .. | 10 | .. | 30 | Life | .. | .. | .. | Life | .. | 3 | .. |
| Northwestern | Ill. | 1851 | Sp. | (5) | No | (13) | (13) | .. | (22) | Usual | .. | .. | 12 | 24 | .. | 36 | .. | .. | 33 | 8 | 3 | .. | 44(32) | 4 | 4 | .. | 4 | 4 | 2 | 4 | .. |
| Washington | Mo. | 1853 | Sp. | No | No | No | (13) | (17) | (22) | Usual | .. | .. | 17 | .. | .. | 17 | .. | .. | 15 | .. | (33) | (33) | 15 | Life | .. | .. | .. | Life | .. | .. | .. |
| Duke | N. C. | 1859 | Sp. | No | No | Yes | .. | .. | .. | Usual | 2 | .. | 35 | .. | .. | 37 | .. | .. | .. | 24 | 12 | .. | 36 | .. | Life | .. | .. | .. | 6 | 6 | .. |
| Marquette | Wis. | 1864 | Sp. | No | No | No | .. | .. | .. | Usual | .. | .. | .. | 3 | .. | 3 | .. | .. | 3 | .. | .. | .. | 3 | .. | 3 | .. | .. | .. | 3 | .. | .. |
| Vassar | N. Y. | 1861 | Sp. | Yes | .. | Yes | .. | .. | .. | Usual | .. | .. | 29 | .. | .. | 29 | .. | .. | 17 | .. | 5 | .. | 22 | Life | .. | .. | .. | 10 | .. | 5 | .. |
| James Millikin | Ill. | 1865 | Sp. | No | No | No | (13) | (18) | .. | Usual | .. | .. | .. | 15 | .. | 15 | .. | .. | .. | 15 | .. | .. | 15 | .. | 3 | .. | .. | .. | 3 | .. | .. |
| Lehigh | Pa. | 1866 | Sp. | No | No | No | .. | (19) | (21) | Usual | .. | .. | 10 | .. | .. | 10 | .. | .. | 10 | .. | (34) | .. | 10 | Life | .. | .. | .. | Life | .. | 6 | .. |
| Johns Hopkins | Md. | 1867 | Gen. | No | No | No | .. | .. | .. | (25) | .. | .. | 12 | .. | .. | 12 | .. | 1 | 12 | .. | .. | .. | 13 | Life | .. | .. | .. | Life | .. | .. | .. |
| Boston | Mass. | 1869 | Sp. | Yes | Yes | Yes | (13) | (22) | .. | Usual | .. | 1 | 29 | .. | .. | 30 | .. | 1 | 50 | .. | .. | .. | 51 | 5 | .. | .. | .. | 5 | .. | .. | .. |
| Syracuse | N. Y. | 1870 | Sp. | Yes | Yes | Yes | .. | .. | .. | Usual | .. | .. | .. | 20 | .. | 20 | .. | 1 | 18 | 28 | 10 | .. | 57 | .. | .. | .. | .. | 6 | 6 | 6 | .. |
| Wellesley | Mass. | 1870 | Sp. | No | .. | Yes | .. | .. | .. | Usual | .. | .. | 25 | .. | .. | 25 | .. | 2(26) | 14 | .. | 3 | 1 | 20 | Life | .. | .. | .. | 6 | .. | 6 | 6 |
| University of South California | Calif. | 1880 | Gen. | (6) | No | No | .. | .. | .. | Usual | .. | .. | 9 | 12 | .. | 21 | .. | .. | 30 | .. | .. | .. | 30 | 3 | 3 | .. | .. | 3 | .. | .. | .. |
| Drake | Iowa | 1881 | Gen. | (7) | No | No | (13) | .. | .. | Usual | .. | 1 | 8 | 16 | .. | 25 | .. | .. | 34 | .. | 12 | .. | 46 | 3 | 3 | .. | .. | 3 | .. | .. | .. |
| Tulane | La. | 1882 | Gen. | (8) | (8) | No | (8) | (20) | .. | Usual | 3 | .. | 17 | .. | .. | 20 | 3 | .. | 17 | .. | .. | .. | 20 | Life | .. | .. | .. | Life | .. | 3 | .. |
| Baylor | Texas | 1886 | Gen. | (9) | (9) | No | .. | .. | .. | Usual | .. | .. | .. | 13 | .. | 13 | .. | .. | .. | 21 | .. | .. | 21 | .. | Life | .. | .. | .. | Life | .. | .. |
| Temple | Pa. | 1888 | Gen. | No | No | No | (13) | .. | .. | Usual | .. | .. | 13 | .. | .. | 13 | 2 | .. | 23 | .. | .. | .. | 25 | Life | .. | .. | .. | Life | .. | .. | .. |
| Leland Stanford Jr. | Calif. | 1885 | Gen. | No | No | No | (13) | .. | .. | Usual | .. | .. | 24 | .. | .. | 24 | .. | .. | 15 | .. | .. | .. | 15 | Life | .. | .. | .. | 10 | .. | .. | .. |
| University of Chicago | Ill. | 1890 | Gen. | No | No | No | .. | .. | (22) | Usual | .. | .. | 7 | 14 | .. | 21 | .. | .. | 10 | 15 | .. | .. | 25 | 3 | 3 | .. | .. | 3 | 3 | .. | .. |

(1) Charter from the crown.

(2) Charter from the proprietors.

(3) The charter of 1650 was confirmed in the Constitution of the Commonwealth 1780 with this proviso: "nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of said University as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay." [60]

(4) In addition to the reservation to amend or repeal, the charter contains a tenure clause of thirty years which was removed in 1869.

(5) "Should the corporation at any time act contrary to the provisions of this charter, or fail to comply with the same, upon complaint being made to the Circuit Court of Cook County, a *scire facias* shall issue, and the circuit attorney shall prosecute in behalf of the People of this State for forfeiture of this charter." [61]

(6) Limited tenure of fifty years.

(7) Trustees are empowered to change the charter. "These articles may be altered by a two-thirds vote of the trustees at any annual meeting or at any meeting rightly called for that purpose, but the name and purpose of the organization shall never be changed except by a unanimous vote of the trustees." [62]

(8) Reservation covers the property transferred by the state to the university. ". . . the property so transferred, may not be sold or disposed of, except under Legislative sanction . . . and if the Tulane University of Louisiana should cease to use the property and exercise the privileges, franchises and immunities, now under the control and administration of, and enjoyed by the University of Louisiana . . . then and in that event the State of Louisiana shall have the right to resume the custody, control and administration of said property . . .". [63]

(9) Tenure of fifty years.

(10) Visitation by the state confined to use of donations by the state, primarily land-grant funds.

(11) In addition to reservation to alter or repeal, the Legislature "may appoint and establish overseers or visitors of the said college, with all necessary powers for the better aid, preservation, and government thereof." [64]

(13) "No student shall be refused admission to or denied any of the privileges, honors, or degrees of said college on account of the religious opinions he may entertain." [65] (Similar provisions are contained in others.)

(14) ". . . shall be free to all persons without distinction as to race, rank, class, sex, or previous occupation." (Reference to students admitted under arrangements with the city.) [66]

(15) Courses in divinity and English language to be given.

(17) "No instruction, either sectarian in religion or party in politics, shall be allowed in any department of said university." [67]

(18) The codicil to the will of James Millikin contained a provision that the Bible be taught.

(19) "A polytechnic College for the education of youth." [68]

(20) "I mean to foster such a course of intellectual development as shall be useful and of solid worth, and not be merely ornamental or superficial." (Letter from Paul Tulane.) [69]

(21) Professors cannot hold the office of trustee.

(22) Professors are not to be required to profess any particular religious opinions as a test of office.

(23) "But no person shall receive such diploma [medicine] unless he shall have pursued the study of medical science for at least three years after he attained the age of sixteen years, with some physician and surgeon, duly authorized by law to practice his profession; and shall also after that age have attended two complete courses of all the lectures delivered in some incorporated medical college, the last of which courses shall have been delivered by the medical faculty of said university." [70]

(24) Usually conferred by colleges in New England, except medical degrees This limitation removed in 1867.

(25) ". . . shall have power to admit students of the said university, who shall merit the distinction, to the office and profession of surgeon, or to the degree of Doctor of Medicine, or of Doctor of Laws, or of Bachelor or Master of Arts, to grant to students in said university such certificates of proficiency and attainments in any special study as the said university may see proper to confer; and to grant the honorary degrees of Doctor of Laws, Doctor of Medicine, or such other degrees as may be proper, to any person who may merit such distinction, whether such person be a student of said university or not." [71]

(26) President and bursar of the college.

(27) Curators of the medical department as well as the council of the university. "The council, whenever they shall organize the medical department of such university, shall appoint not less than twenty persons, being practicing physicians and surgeons, to be curators of the medical department of said university, and the president of the medical society of the county of Erie, and the censors of the state medical society appointed for the senatorial district in which said university shall be situated shall be ex-officio curators thereof." [72]

(28) "In addition to the members of the council . . . each of the several faculties of said university shall appoint one member of said council, who shall hold his office during the pleasure of the faculty appointing him." [73] At present the deans of the several faculties are members of the council without voting power.

(29) Became a state university in 1906. The board of visitors are appointed by the governor, by and with the consent of the senate.

(30) In 1807 members of the governor's council, the president of the senate, the speaker of the house of representatives, and the chief justice of the superior court were made, ex-officio, trustees of the college, in respect to grants made by the State of New Hampshire. These are not included.

(31) "No one religious sect shall ever have a majority of the board." [74]

(32) Visitors were provided for in addition to the trustees. Each conference "shall have the right to appoint annually two suitable persons, members of their own body, visitors to said university, who shall attend the examination of students, and be entitled to participate in the deliberations of the Board of Trustees and enjoy all the privileges of members of said board except the right to vote." [75] In 1861 the charter was amended providing that the two members elected by each conference should also "be and perform the duties of the visitors." [76]

(33) Also an advisory board consisting of twelve alumni and deans of the College of Liberal Arts, Schools of Engineering, Architecture, Commerce, and Finance, Law, Medicine and Dentistry. (See catalog 1925.)

(34) Alumni sit with the board to advise only.

(35) Recommendations are made by the alumni association to the trustees.

(36) "The Board of Trustees invites the University Faculty to name three of its members, each for a term of three years, not exceeding one member from any College or School, who shall sit with the Board at all its regular and special meetings, and who shall be called by courtesy Faculty Members of the Board. They shall be entitled to notice of all meetings of the Board and to take part in the discussions and deliberations thereof, but shall have no voting power." [77]

CHART 2

STATE CONTROL OF PRIVATE INCORPORATED INSTITUTIONS OF HIGHER EDUCATION — SUMMARY

| Aspects of State Control | Authority of the State in the Control of Private Incorporated Institutions of Higher Education as Defined in the Decisions of the United States Supreme Court. | State Control of Private Incorporated Institutions of Higher Education as Provided in the Laws of the States Governing Their Incorporation. | State Control of Private Incorporated Institutions of Higher Education as Defined in the Charters of Selected Private Colleges and Universities. |
|---|---|---|---|
| Source of Authority to Incorporate Institutions of Higher Education. | Authority to incorporate educational institutions rests with the state. | States generally provide for the incorporation of educational institutions through general laws. Three states only retain the early procedure of chartering institutions through special act of the legislature. Eleven states provide for incorporation either under general law or by special act. | Thirty of the institutions considered are chartered under special act of legislation; nine under general law. |
| Initial Control by the State over Private Incorporated Institutions of Higher Education. | A state may place upon the corporate powers of an institution at the time of incorporation whatever limitations it deems best in the interest of public policy.<br><br>The state must grant to the corporation the powers necessary for it to do business in pursuance of its purpose.<br><br>The state respects the right of the donor to direct the use of his charity, either himself, or through trustees to whom he assigns his right. | The laws generally provide no state control of incorporated institutions of higher education by requiring at the time of incorporation careful scrutiny of the articles of incorporation by a special approving agency. Seven states place approving power in a judge of the county or circuit court, six in a charter board or corporation commission, ten in an educational agency.<br><br>The laws generally provide no state control by prescribing minimum standards for the amount of property, number of instructional staff, courses, admissions, or degrees.<br><br>There is a tendency to empower the educational agency of the state, upon its own standards, to approve the articles of incorporation, or grant license to confer degrees. Ten states so provide. | States maintain little or no control by limiting educational institutions in the matter of property, admissions, courses, staff, or degrees. The earlier practice of restricting the maximum property holdings is being discontinued.<br><br>The charters of approximately one-half of the institutions contain clauses forbidding the imposition of any religious test as a basis for admission.<br><br>States exercise an initial control over chartered institutions through their legislatures as approving agencies. It is not the practice of states to retain control through representation upon the managing board. |
| Continuing Control by the State over Private Incorporated Institutions of Higher Education. | A state may exercise a continuing control over incorporated institutions of higher education through<br><br>1. Reservation of power to alter or repeal the charter<br><br>2. Courts<br><br>3. General regulatory legislation.<br><br>The exercise of continuing control, even though power to amend or repeal is reserved, cannot defeat or substantially impair the object of the grant, or any rights vested under the charter.<br><br>Control through the courts is directed primarily to safeguarding the proper pursuance of the objects of the trust and right appropriation of the funds.<br><br>Any enactment by the legislature of a state must not be an unwarranted, arbitrary interference with the constitutional right to carry on a lawful business, and to use and enjoy property. | The laws generally provide no continuing state control by limiting the tenure of the educational corporation, or by reserving to the legislature the right to amend or repeal the articles of incorporation. Nine states limit the tenure. Six states reserve the right to amend or repeal.<br><br>There is a tendency to empower the educational agency of the state with authority to visit and inspect institutions of higher education, and where standards prescribed by the agency are not complied with, to amend or repeal the articles of incorporation or revoke the license to confer degrees. Seven states so provide. | Continuing control is maintained by states over a few chartered institutions of higher education through limited tenure of the charter, or through regulatory control by an agency of the state. The charters of three institutions contain limited tenure clauses. Institutions in New York State except Columbia are subject to visitation by the Regents of the University of the State of New York. Three institutions render annual reports to the legislature.<br><br>There is reserved to the legislature in the charters of one-third of the institutions the right to amend or repeal the charter.<br><br>During the first decades following the revolution Massachusetts, New York, Pennsylvania, Connecticut, and New Hampshire showed great activity in extending control over their respective colleges. For the most part this control has been relinquished. |

# CHAPTER V

## SUMMARY OF FINDINGS

This concluding chapter summarizes the findings in the study of the United States Supreme Court decisions, state laws, and charters of private colleges and universities as they relate to the authority of the state to incorporate institutions of higher education, and to the state's initial and continuing control over such institutions.

The findings are compactly and conveniently assembled in Chart 2. They are so arranged that state control may be considered either with respect to the sources examined or to its various aspects. Repetition of the findings is not necessary. In general it may be said that the states do not provide uniform means for the control of private incorporated institutions of higher education, either at the time of incorporation or thereafter. The policy is to give such institutions, within the power and privilege granted by the state, free reign in the management of their affairs including the granting of degrees. The primary function of the state is to see that the objects of the trust under which the institutions operate are duly pursued and the funds rightly appropriated; any action by the state is to secure the object of the grant or a public right.

There is a tendency to place authority in the educational agency of the state, upon such standards as the educational agency may define, to approve the articles of incorporation of new institutions or to grant the institutions license to confer degrees; likewise, to alter the articles or revoke the license where standards prescribed by the agency are not complied with.